



Date: July 6, 2016

To: Solid Waste Alternatives Advisory Committee Members

From: Warren Johnson, Solid Waste Compliance Manager

Subject: Response to Public Comments Received on Proposed Changes to Metro Code Title V

On February 25, 2016, the Solid Waste Alternatives Advisory Committee discussed a variety of proposed changes to Metro Code Title V (Solid Waste) that aim to bring greater consistency in how Metro reviews and authorizes solid waste facilities and greater transparency in how Metro implements its requirements to protect the environment and the public's health. SWAAC endorsed the initiation of a 60-day public review and comment period to solicit further input on the proposed changes. The formal public comment period opened on March 1 and ended on April 29, 2016.

The public comments that Metro received, Metro's responses to those comments, and any resulting revisions to the proposed Metro Code Chapters 5.00, 5.01, 5.02, 5.05 are described in the following attachments:

- Summary of the written comments received from the public and Metro's responses to those comments entitled, *Metro's Response to Comments on Proposed Changes to Metro Code Title V*;
- Copies of the public comment received; and
- Comparison table showing all of the proposed revisions made in response to the comments entitled, *Exhibit A*.

SWAAC members have an opportunity to provide input on the above-mentioned revisions before the proposed Code changes are presented to Metro Council for consideration later this year.

Exhibit A

Summary of Initially Proposed Changes to Metro Code Title V in Comparison with Revisions Made in Response to Comments

July 6, 2016

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
1	<p><u>Chapter 5.00 – Solid Waste Definitions</u></p> <p><u>“Community enhancement fee” means the fee collected in addition to general disposal rates that pays for rehabilitation and enhancement projects in the areas surrounding solid waste facilities and disposal sites.</u></p>	<p><u>Chapter 5.00 - Solid Waste Definitions</u></p> <p><u>“Community enhancement fee” or “enhancement fee” means the fee collected in addition to general disposal rates that pays for rehabilitation and enhancement projects in the areas surrounding solid waste facilities and disposal sites.</u></p>
2	<p><u>Chapter 5.00 - Solid Waste Definitions</u></p> <ul style="list-style-type: none"> • "Designated facility" means one of the facilities constituting a facility that Metro designates as part of the system designated from time to time pursuant to Chapter 5.05. • "Metro designated facility" means a facility in the system of solid waste facilities and disposal sites that Metro authorizes is authorized under Chapter 5.05 to accept waste generated within the jurisdiction of Metro. 	<p><u>Chapter 5.00 - Solid Waste Definitions</u></p> <ul style="list-style-type: none"> • "Designated facility" <u>means a facility in the system of solid waste facilities and disposal sites that Metro authorizes under Chapter 5.05 to accept waste generated within the jurisdiction of Metro.</u>means one of the facilities constituting a part of the system designated from time to time pursuant to Chapter 5.05. • "Metro designated facility" means a facility in the system of solid waste facilities and disposal sites that is authorized under Chapter 5.05 to accept waste generated within the jurisdiction of Metro.

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
3	<p>The initial draft did not include a definition for the term “electronic device.”</p>	<p>Chapter 5.00 - Solid Waste Definitions</p> <p><u>“Electronic device” means:</u></p> <ol style="list-style-type: none"> <u>(1) A computer monitor of any type having a viewable area greater than four inches measured diagonally;</u> <u>(2) A desktop computer or portable computer;</u> <u>(3) A television of any type having a viewable area greater than four inches measured diagonally;</u> <u>(4) A computer peripheral; or</u> <u>(5) A printer.</u> <p><u>The term electronic device does not include:</u></p> <ol style="list-style-type: none"> <u>(1) Any part of a motor vehicle;</u> <u>(2) Any part of a larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, such as diagnostic, monitoring or control equipment;</u> <u>(3) Telephones or personal digital assistants of any type unless the telephone or personal digital assistant contains a viewable area greater than four inches measured diagonally; or</u> <u>(4) Any part of a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier.</u>
4	<p>Chapter 5.00 - Solid Waste Definitions</p> <ul style="list-style-type: none"> • "Regional system fee" means those fees which pay the cost of the a fee that pays Metro waste management system <u>costs</u>. • "<u>Regional transfer charge</u>" means those fees which pay a fee that pays the direct unit operating costs of the Metro transfer stations. This fee is imposed upon all solid waste delivered to Metro disposal system facilities. 	<p>Chapter 5.00 - Solid Waste Definitions</p> <ul style="list-style-type: none"> • "Regional system fee" means those fees which pay the cost of the a fee that pays the costs for all associated Metro solid waste services related to management of the entire recycling, processing and disposal system. Metro waste management system. • "<u>Regional transfer charge</u>" means those fees which pay the direct unit operating costs of the Metro transfer stations. This fee is imposed upon all solid waste delivered to Metro disposal system facilities.

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
5	<p>Chapter 5.00 – Solid Waste Definitions</p> <p>"Standard recyclable materials" means newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, aluminum, container glass, high-grade office paper, tin/steel cans, yard debris, mixed scrap paper, milk cartons, plastic containers, milk jugs, phone books, magazines, and empty aerosol cans.</p>	<p>Chapter 5.00 – Solid Waste Definitions</p> <p>"Standard recyclable materials" means newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, aluminum, container glass, high-grade office paper, tin/steel cans, yard debris, mixed scrap paper, milk cartons, plastic containers, milk jugs, phone books, magazines, and empty aerosol cans.</p>
6	<p>Section 5.01.010 - Purpose</p> <p><u>(a)</u> This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to protect:</p> <p><u>(1) Protect</u> and preserve the health, safety and welfare of Metro's residents; to implement</p> <p><u>(2) Protect and preserve the environment and livability of the region;</u></p> <p><u>(3) Implement programs</u> cooperatively with federal, state and local agencies <u>consistent with</u> the Regional Solid Waste Management Plan; to provide a</p> <p><u>(4) Provide</u> coordinated regional disposal, <u>management</u> and resource recovery program and a solid waste management plan programs to benefit all citizens of Metro; and to reduce</p> <p><u>(5) Adapt and respond to changes in the solid waste system; and</u></p> <p><u>(6) Reduce</u> the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery.</p> <p><u>(b)</u> The provisions of this chapter shall be liberally construed to accomplish these purposes.</p>	<p>Section 5.01.010 - Purpose</p> <p><u>(a)</u> This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to protect:</p> <p><u>(1) Protect</u> and preserve the health, safety and welfare of Metro's residents; to</p> <p><u>(2) Implement the Regional Solid Waste Management Plan</u> cooperatively with federal, state and local agencies; the Regional Solid Waste Management Plan; to</p> <p><u>(3) Provide</u> a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro; and to</p> <p><u>(4) Reduce</u> the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery.</p> <p><u>(b)</u> The provisions of this chapter shall be liberally construed to accomplish these purposes.</p>
7	<p>Section 5.01.030 – Prohibited Activities</p> <p><i>The initial draft did not include a prohibition on the outdoor storage of "electronic devices."</i></p>	<p>Section 5.01.030 – Prohibited Activities</p> <p><u>(g) Any person to store electronic device waste uncovered and outside of a roofed structure.</u></p>

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
8	<p>5.01.040 – Exemptions to Prohibited Activities</p> <p>(D) Operations or facilities that chip or grind wood wastes, unless:</p> <p style="padding-left: 40px;">(i) such chipped or ground wood wastes are processed for composting;</p> <p style="padding-left: 80px;">or</p> <p style="padding-left: 40px;">(ii) such operations or facilities are other wise regulated under Metro Code Section 5.01.045.</p>	<p>5.01.040 – Exemptions to Prohibited Activities</p> <p>(8) (D) An O operations or facilityies that chip or grind<u>processes</u> wood wastes, unless:</p> <p style="padding-left: 40px;">(i) The<u>such chipped or ground</u> wood wastes are processed for composting; or</p> <p style="padding-left: 40px;">(ii) The<u>such</u> operations or facilityies is<u>are</u> other-wise regulated under Metro Code Section 5.01.050<u>45</u>this chapter.</p>
9	<p>5.01.050 – License Requirements and Fees</p> <p>(5) Chipping or grinding<u>Processing</u> wood waste for use as an industrial fuel if such facility is otherwise regulated under this Section 5.01.045 of this chapter.</p>	<p>5.01.050 – License Requirements and Fees</p> <p>(5) Chipping or grinding<u>Processing</u> wood waste for use as an industrial fuel if such facility is otherwise regulated under this Section 5.01.045 of this chapter.</p>
10	<p>Section 5.01.050 - License Requirements and Fees</p> <p>(6) Shredding, milling, pulverizing, or storing outdoors any electronic waste.</p>	<p>Section 5.01.050 - License Requirements and Fees</p> <p><i>The revised draft does not include the initially proposed licensing requirement for shredding, milling, pulverizing, or storing electronic waste outdoors</i></p>

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
11	<p><u>Section 5.01.080 – License Issuance</u></p> <p>(e) If the Chief Operating Officer does not act to grant or deny a license application within 120 days after the <u>filing of applicant files</u> a complete application, the license shall be deemed granted for<u>applicant may send a written request to the solid waste facility or activity requested in Council President requesting that the application, and Council direct</u> the Chief Operating Officer shall issue a license containing the standard terms and conditions included in other comparable licenses issued by Metro to act.</p> <p>(f) If the applicant substantially modifies the application during the course of the review, the review period for the decision shall be<u>is</u> restarted. The review period can be extended by mutual agreement of the applicant and the Chief Operating Officer. An applicant may withdraw its application at any time prior to before the Chief Operating Officer's decision and may submit a new application at any time thereafter.</p>	<p><u>Section 5.01.080 – License Issuance</u></p> <p>(e) If the Chief Operating Officer does not act to grant<u>approve</u> or deny a <u>new</u> license application within 120<u>180</u> days after the <u>filing of applicant files</u> a complete application, the license shall is be deemed granted for the solid waste facility or activity requested in the application. <u>The deadline for the Chief Operating Officer to approve or deny an application may be extended as provided in this section. If a license is issued pursuant to the subsection, then and the Chief Operating Officer shall issue at the license will contain license containing</u> the standard terms and conditions included in other comparable licenses issued by Metro.</p> <p>(f) If the applicant substantially modifies the application during the course of the review, the review period for the decision shall be restarted. The review period can be extended by mutual agreement of the applicant and the Chief Operating Officer. At any time after an applicant files a complete license application, the deadline for the Chief Operating Officer to approve or deny the application is extended if:</p> <p>(1) <u>The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Chief Operating Officer to act is restarted as of the date Metro receives the applicant's modifications; or</u></p> <p>(2) <u>The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.</u></p> <p>(g) An applicant may withdraw its application at any time prior to before the Chief Operating Officer's decision and may submit a new application at any time thereafter.</p>
12	<p><u>5.01.110 – License Renewal</u></p> <p>(a) The Chief Operating Officer shall renew<u>may approve or deny a license renewal of</u> a solid waste facility license.</p>	<p><u>5.01.110 – License Renewal</u></p> <p>(a) The Chief Operating Officer shall renew a solid waste facility license is<u>responsible for approving or denying a solid waste facility license renewal. The Chief Operating Officer will approve or deny a license renewal consistent with this section.</u></p>

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
13	<p><u>Section 5.01.180 – Franchise Issuance</u></p> <p>(g) The Council shall act to<u>must</u> grant or deny a franchise application within 120 days after the filing of applicant files a complete application. The, unless the deadline for the Council to act to grant or deny an application may be extended as provided in this section. If the Council does not act to grant or deny an application by the deadline for such action, the franchise shall be deemed granted for the solid waste facility or disposal site requested in the application, and the Chief Operating Officer shall issue a franchise containing the standard terms and conditions included in other comparable franchises issued by Metro.</p> <p>(h) At any time after the filing of an applicant files a complete franchise application, the deadline for the Council to act to grant or deny the application shall be extended if:</p> <ol style="list-style-type: none"> (1) The Council acts to extend<u>extends</u> the deadline for up to an additional 60 days, which the Council may do one time only once for any single application; (2) The applicant substantially modifies the application during the course of the review <u>period</u>, in which case the 120 days review period for the Council to act shall be restarted as of the date Metro receives the applicant's modifications; or (3) The applicant and the Chief Operating Officer <u>mutually</u> agree to extend the deadline for the Council to act for a specified <u>time</u> period of time. 	<p><u>Section 5.01.180 – Franchise Issuance</u></p> <p>(g) If the Council shall act to<u>does not grant approve</u> or deny a <u>new</u> franchise application within 120<u>180</u> days after the <u>applicant files filing of</u> a complete application <u>the franchise is be deemed granted for the solid waste facility or disposal site requested in the application.</u> The deadline for the Council to act to grant approve or deny an application may be extended as provided in this section. <u>If a franchise is issued pursuant to the subsection, then the franchise will contain the standard terms and conditions included in other comparable franchises issued by Metro.</u> If the Council does not act to grant or deny an application by the deadline for such action, the franchise shall be deemed granted for the solid waste facility or disposal site requested in the application, and the Chief Operating Officer shall issue a franchise containing the standard terms and conditions included in other comparable franchises issued by Metro.</p> <p>(h) At any time after the filing of an applicant files a complete franchise application, the deadline for the Council to act to grant<u>approve</u> or deny the application shall be extended if:</p> <ol style="list-style-type: none"> (1) The Council acts to extend<u>extends</u> the deadline for up to an additional 60 days, which the Council may do one time only once for any single application; (2) The applicant substantially modifies the application during the course of the review <u>period</u>, in which case the 120<u>180</u> days review period for the Council to act shall be restarted as of the date Metro receives the applicant's modifications; or (3) The applicant and the Chief Operating Officer <u>mutually</u> agree to extend the deadline for the Council to act for a specified <u>time</u> period of time.

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
14	<p>5.01.320 – Enforcement Provisions</p> <p>(f) If Metro revokes or refusalrefuses to renew thea franchise or license, all rights of the franchisee or licensee <u>rights</u> in the franchise or license shall immediately be divestedbecome void.</p>	<p>5.01.320 – Enforcement Provisions</p> <p>(f) If Metro revokes or refusalto renew thea franchise or license, all rights of the franchisee or licensee <u>rights</u> in the franchise or license shall immediately be divestedbecome void.</p>
15	<p>5.02.050 Source Separated Recyclable Disposal Charge Credit</p> <p>Notwithstanding the provisions of Metro Code Section 5.02.025,</p> <p>(a) A non-commercial customerscustomer at Metro South Station or Metro Central Station who disposedisposes of source-separated recyclable material as defined in ORS 459.005 shallwill receive a <u>\$3.00</u> disposal charge credit in the amount of \$3.00 forwhen disposing of fewer than 100 pounds of recyclables, and in the amount of a \$6.00 for credit when disposing of 100 pounds or more of recyclables. source-separated recyclable material. <u>“Source separated recyclable material” has the same meaning as defined in ORS 459.005.</u></p>	<p>5.02.050 Source–Separated <u>Standard</u> Recyclable <u>Materials</u> Disposal Charge Credit</p> <p>Notwithstanding the provisions of Metro Code Section 5.02.025,</p> <p>(a) A non-commercial customerscustomer at Metro South Station or Metro Central Station who disposedisposes of source-separated <u>standard</u> recyclable materials <u>(except yard debris) that are generated by a household as defined in ORS 459.005 shallwill</u> receive a <u>\$3.00</u> disposal charge credit in the amount of \$3.00 forwhen disposing of fewer than 100 pounds of <u>such</u> recyclables, and in the amount of a \$6.00 for credit when disposing of 100 pounds or more of <u>such</u> recyclables.</p>
16	<p>Section 5.02.060 - Charges for Management of Household Hazardous Wastes</p> <p>(a) There is hereby establishedCustomers delivering household hazardous waste at Metro hazardous waste facilities must pay a “household hazardous waste management charge that shall be collected on household hazardous waste accepted at Metro hazardous waste facilities. Such household hazardous waste management.” This charge shall be in lieu of all other base disposal charges, user fees, regional transfer charges, rehabilitation and enhancement fees, and certification non-compliance fees that may be required by this chapter; and excise taxes required by Chapter 7.01.</p>	<p>Section 5.02.060 - Charges for Management of Household Hazardous Wastes</p> <p>(a) There is hereby establishedCustomers delivering household hazardous waste at Metro hazardous waste facilities must pay a “household hazardous waste management charge that shall be collected on household hazardous waste accepted at Metro hazardous waste facilities. Such household hazardous waste management.” This charge shall be in lieu of all other base disposal charges, user fees, regional transfer charges, rehabilitation and <u>community</u> enhancement fees, and certification non-compliance fees that may be required by this chapter; and excise taxes required by Chapter 7.01.</p>

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
17	<p>Section 5.02.120 - Regional System Fees</p> <p>(a) The regional system fee shall be the dollar amount per ton of solid waste adopted by anCouncil ordinance effor the <u>purpose of paying for Metro waste management system costs.</u> Metro Council, proratedwill round the regional system fee to the nearest one-hundredth of a ton and prorate it based on the actual weight of solid waste. at issue rounded to the nearest one-hundredth of a ton.</p>	<p>Section 5.02.120 - Regional System Fees</p> <p>The regional system fee shall be the dollar amount per ton of solid waste adopted by anCouncil ordinance effor the <u>purpose of paying the costs for all associated Metro solid waste services related to management of the entire recycling, processing and disposal system.</u> Metro Council, proratedwill round the regional system fee to the nearest one-hundredth of a ton and prorate it based on the actual weight of solid waste. at issue rounded to the nearest one-hundredth of a ton.</p>
18	<p>Section 5.05.010 - Purpose</p> <p><u>This chapter governs the regulation of solid waste transported, managed and disposed at locations outside the Metro regional boundary. The purposes of this chapter are to:</u></p> <p>(a) <u>Protect and preserve the health, safety and welfare of residents located outside the region when solid waste generated within Metro is delivered there;</u></p> <p>(b) <u>Protect and preserve the environment and livability of areas located outside the region when solid waste generated within Metro is delivered there;</u></p> <p>(c) <u>Implement programs and authorizations cooperatively with federal, state and local agencies consistent with the regional solid waste management plan;</u></p> <p>(d) <u>Provide a coordinated regional disposal, management and resource recovery program to benefit all citizens of Metro and communities that receive solid waste generated within Metro;</u></p> <p>(e) <u>Adapt and respond to changes in the solid waste system; and</u></p> <p>(f) <u>Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery in accordance with the regional solid waste management plan.</u></p> <p><u>The provisions of this chapter should be liberally construed to accomplish these purposes.</u></p>	<p>Section 5.05.010 - Purpose</p> <p>(a) <u>This chapter governs the regulation of solid waste transported, managed and disposed at locations outside the Metro regional boundary. The purposes of this chapter are to:</u></p> <p>(1) <u>Protect and preserve the health, safety and welfare of Metro's residents;</u></p> <p>(2) <u>Implement the Regional Solid Waste Management Plan cooperatively with federal, state and local agencies;</u></p> <p>(3) <u>Provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro;</u></p> <p>(4) <u>Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery; and</u></p> <p>(5) <u>Protect the citizens of the region from liability arising from the use of a disposal site subject to federal law.</u></p> <p>(b) <u>The provisions of this chapter shall be liberally construed to accomplish these purposes.</u></p>

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
19	<p>Section 5.05.080 - Removing From and Amending the Designated Facilities List</p> <p>(6) (b) Any other factor the Council considers appropriate.</p>	<p>Section 5.05.080 - Removing From and Amending the Designated Facilities List</p> <p>(6) (b) Any other factor the Council considers appropriate to accomplish the purposes of this chapter.</p>
20	<p>Section 5.05.150 - Non-System License Issuance Timetable for Non-Putrescible Waste</p> <p>(b) The Chief Operating Officer shall formulate and provide to the Council may impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as the Chief Operating Officer considers necessary under the circumstances.</p>	<p>Section 5.05.150 - Non-System License Issuance Timetable for Non-Putrescible Waste</p> <p>(b) The Chief Operating Officer shall formulate and provide to the Council may impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as the Chief Operating Officer considers necessary under the circumstances to accomplish the purposes of this chapter.</p>
21	<p>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms</p> <p>(a) The Chief Operating Officer may adopt rules, performance standards, procedures and forms to implement any provision of this chapter. Any rule, performance standard, procedure and form adopted under this section has the same force and effect as any other chapter provision.</p> <p>(b) Before the Chief Operating Officer adopts a rule or performance standard under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. The Chief Operating Officer may also hold a public hearing on any proposed rule or performance standard if the Chief Operating Officer determines that there is sufficient public interest in the proposed rule or performance standard.</p> <p>(c) If the Chief Operating Officer holds a public hearing on any proposed rule or performance standard, the Chief Operating Officer will give public notice of the hearing not less than 10 days nor more than 30 days before the public hearing. The notice will include the time, place, and purpose of the public hearing, a brief description of the proposed rule or performance standard, and the location at which a person may obtain copies of the full text of the proposed rule or performance standard.</p> <p>(d) Unless otherwise stated, all rules and performance standards adopted under this section take effect when the Chief Operating Officer adopts them.</p>	<p>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms</p> <p>(a) The Chief Operating Officer may adopt <u>or amend</u> rules, performance standards, procedures and forms to implement any provision of this chapter. Any rule, performance standard, procedure and/or form adopted <u>or amended</u> under this section has the same force and effect as any other chapter provision.</p> <p>(b) Before the Chief Operating Officer adopts <u>or amends</u> a rule or performance standard under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. <u>The Chief Operating Officer will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description of the proposed rule, performance standard or form; the location at which a person may obtain a copy of the full text of the proposed rule, performance standard or form; the method for submitting public comments; and the deadline for submitting public comments. The Chief Operating Officer may also hold a public hearing on any proposed rule or performance standard if the Chief Operating Officer determines that there is sufficient public interest in the proposed rule or performance standard.</u></p>

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
21	<p><u>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms (CONTINUED)</u></p> <p>(e) Notwithstanding subsection (b), the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice or comment upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. The Chief Operating Officer must include the specific reasons for the serious prejudice. Any rule or performance standard adopted pursuant to this subsection expires no later than 180 days from its effective date.</p>	<p><u>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms (CONTINUED)</u></p> <p>(c) <u>In addition to public comments, the Chief Operating Officer will also hold a public hearing on any proposed rule or performance standard or amendment to an existing rule or performance standard. If the Chief Operating Officer holds a public hearing on any proposed rule or performance standard, the public hearing will take place not less than 14 days from the deadline for submitting public comments. The Chief Operating Officer will give public notice of the hearing not less than 10 days nor more than 30 days before the public hearing. The notice will include the time, place, and purpose of the public hearing, a brief description of the proposed rule or performance standard, and the location at which a person may obtain copies of the full text of the proposed rule or performance standard.</u></p> <p>(d) <u>During the public hearing, the Chief Operating Officer will receive any offered written or oral testimony regarding the proposed rule, including any written comments received during the public comment period.</u></p> <p>(e) <u>After the public hearing is closed, the Chief Operating Officer may adopt the rule as originally proposed, adopt a modified version of the proposed rule, or reject the proposed rule. If the Chief Operating Officer intends to adopt a substantially modified version of the proposed rule, the Chief Operating Officer must mail a notice of opportunity to comment on the proposed modifications along with a copy of the text of the new proposed changes to each person who has either submitted written comments on the proposal, testified at the public hearing, or asked to receive a notice of proposed modifications. Metro must also post the notice on its website. The public has 15 days from the mailing date to provide written comment on the proposed modifications, but no further public hearing is required. After the 15-day comment period ends, the Chief Operating Officer may adopt the proposed rule.</u></p> <p>(f) <u>Unless otherwise stated, all rules and performance standards Any rule or performance standard adopted under this section takes effect 30 days after when the Chief Operating Officer adopts them, unless the Chief Operating Officer specifies a later effective date.</u></p>

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
21	Intentionally left blank. Continued from previous page.	<p>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms (CONTINUED)</p> <p>(g) Notwithstanding subsections (b) and (c), the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice, or comment or hearing upon a written finding that a failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. The Chief Operating Officer must include the specific reasons for the serious prejudice. Any rule or performance standard adopted pursuant to this subsection expires no later than 180 days from its effective date.</p> <p>(h) <u>If the Metro Council enacts an ordinance establishing rulemaking procedures that are applicable agency-wide, then the rulemaking procedures set forth in this chapter are superseded by the agency-wide procedures. However, the procedures set forth in this chapter will still apply to the adoption or amendment of performance standards and forms.</u></p> <p>(i) <u>Any form, performance standard, or administrative rule (formerly known as an “administrative procedure”) that is in effect on the date of this ordinance’s adoption remains in effect unless otherwise repealed or amended.</u></p> <p>(j) <u>For purposes of ORS 34.020, any rule adopted by the Chief Operating Officer under this section is considered a final decision.</u></p>

M:\rem\regaff\confidential\johnson\Miscellaneous\Code & Policy\Code modifications\2016 Updates\Comments\Summary of revisions in response to comments_07062016.docx

Metro's Response to Comments on Proposed Changes to Metro Code Title V

July 6, 2016

On March 1, 2016, Metro opened a 60-day public review and comment period to solicit input on a series of proposed changes to Metro Code Chapters 5.00, 5.01, 5.02, and 5.05. The formal comment period was open from March 1 through April 29, 2016. The comments received from the public during that time and Metro's responses are summarized below.

I. Bell Comment (refer to attached email dated February 20, 2016):

- Bell Comment: *Metro Code Section 5.01.310 -The one area of interest for me and for my municipal clients is the rate charged by other disposal facilities. Section 310 – Determination of Rates, starts to address the issue, but is so weak you might as well forget the changes.*

Here is my proposed change: If the total rate varies within 5% of the current Metro tip, licensee must substantiate the cost of service. The cost of service includes the costs of transfer, transport, and disposal.*

** Total rate includes the posted tipping fee plus any scalehouse, environmental, or transaction fees.*

The key word is must. What I am finding is the transaction fee / environmental fee charged by some licensees is adding an additional \$2 to \$5 per ton to the total cost. This charge, combined with their tipping fee, puts some facilities higher than Metro by more than 5%.

Metro Response to Bell Comment: At this time, staff does not recommend any additional changes to this section other than non-substantive housekeeping changes to improve clarity, consistency, and ease of reading. This section has been renumbered and will remain as proposed.

II. Garrett Comments (refer to attached letter dated March 14, 2016):

- Garrett Comment #1: *Metro Code Chapter 5.00 – “Recoverable Solid Waste” attempts to define products based upon their acceptance or rejection by Metro's facilities without regard to the marketplace and competing facilities abilities to quite frankly “do a better job” than Metro's facilities. This definition should be expanded to include all system licensed or franchised facilities.*

Metro Response to Garrett Comment #1: Staff does not recommend any additional changes to this definition other than non-substantive housekeeping changes to improve clarity, consistency, and ease of reading. The term is internal to Metro's

operations and is used for the purpose of setting disposal charges at Metro's facilities. The definition does not apply to other solid waste facilities.

- Garrett Comment #2: *Metro Code Section 5.01.040 (a) (D) - Comment A16 "Remove licensing exemption for wood waste processing operations and facilities." Under Council guidance the SWAC [sic] has formed a subcommittee which is charged with recommending to Council whether or not "clean MRF's" and other source-separated recycling facilities should be regulated by Metro. It would seem that Staff is circumventing the process assigned by Council to the subcommittee. This subject should be reviewed by the SWAC subcommittee as part of their process.*

Metro Response to Garrett Comment #2: Staff recommends withdrawing the initial proposal and not changing the current licensing exemption for certain wood waste operations and electronic waste processing facilities at this time. Staff initially proposed to remove the exemption and require licensing of those types of facilities. Commenters raised concerns that the proposed change had not gone through the same evaluation process as that of other facilities that exclusively receive source-separated recyclable materials – which are currently being considered by a subcommittee of the Solid Waste Alternatives Advisory Committee (SWAAC). The proposed licensing change for certain wood waste processing operations and electronic waste processing facilities requires further evaluation by Metro through SWAAC. Refer to Revisions Nos. 7 through 10 in Exhibit A.

- Garrett Comment #3: *Metro Code Section 5.01.080 (e) - Comment A52 "Remove automatic granting of a license if the Chief Operating Officer does not act on the application within 120 days." This removal removes accountability and surety that the Chief Operating Officer will act reasonably and expeditiously on applications. Yes, there is appeal to the Council President, however that appeal at minimum adds substantive time to the application process and at maximum causes the application to "die in process" due to lack of Council President action. This creates a situation of uncertainty for businesses which is unacceptable and contrary to the concept of responsible, respondent government.*

Metro Response to Garrett Comment #3: Staff recommends withdrawing the initial proposal and not changing the current process of automatically granting a license if Metro fails to act within the required timeframe. Staff also recommends extending Metro's decision-making timeframe for new licenses and franchises to 180 days to ensure that Metro has adequate time to thoroughly evaluate applications and coordinate decision-making with other jurisdictions. Metro's decision-making timeframe for license and franchise renewals will remain at 120 days as currently provided in Metro Code. Refer to Revisions Nos. 11 and 13 in Exhibit A.

- Garrett Comment #4: Metro Code Section 5.01.280 - “Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms.” Conceptually, the movement of Metro toward the type of government with administrative rulemaking similar to that of State and Federal government is a good move. However, this process should be transparent. It is understood that certain administrative rules may not garner attention worthy of the cost and effort necessary for public hearing, but leaving the determination if a proposed rule is worth public hearing solely up to the Chief Operating Officer is outside the bounds of transparent government. The Chief Operating Officer is a person and subject to fault and error. There should be a “trigger” with which the public can force public hearings on proposed rulemaking, regardless of the opinion of the Chief Operating Officer. Further, there should be recognition that Metro is different than State Government, unique in the United States and elsewhere. Because of this uniqueness, Metro should adopt the good parts of Administrative Rulemaking and then look past to new levels of transparency and accountability. In doing so, Council should provide an appeal process through which decisions made by the human and therefore fallible Chief Operating Officer can be fully vetted and either affirmed or negated by the Council should adequate affected persons request such.

Metro Response to Garrett Comment #4: Staff recommends revising the proposed section to clarify that the Chief Operating Officer will hold a public hearing on any proposed rule or standard. Refer to Revision No. 21 in Exhibit A.

Staff does not recommended including a specified appeal process as part of the proposed section. Any rule or standard adopted under the proposed section would be considered a final decision; however, the public always has the opportunity to raise any issues of concern to the Metro Council as part of the standard public communication portion of each Council meeting.

- Garrett Comment #5: Metro Code Section 5.02.170 - “Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms.” Please refer to 5.01.280 above.

Metro Response to Garrett Comment #5: Refer to Metro’s response to Garrett Comment #4 above.

- Garrett Comment #6: Metro Code Section 5.05.200 - “Issuance of Required Use Orders.” The removal of the ability and right of waste haulers and other persons to choose a facility to patronize based upon cost, service, products offered, and convenience is not non-substantive as purported by Staff. What this does is it removes any surety that a business which is well run and provides a superior services [sic] can be assured of market success. This is a terrible idea which should be eliminated.

Metro Response to Garrett Comment #6: Staff does not recommend any additional changes to this section other than non-substantive housekeeping changes to improve clarity, consistency, and ease of reading. This section has been renumbered and broken up into shorter sentences as appropriate. None of the proposed revisions to this section change or add new requirements. The section will remain as proposed.

III. Wuest Comment – the following is an excerpt from the commenter’s letter (refer to attached letter dated April 27, 2016):

- Wuest Comment: *Metro Code Section 5.01.040 - I represent Mr. Jim Smith of Jim Smith Excavating and write this letter to express opposition to the proposed removal of the existing exemption in Metro Code 5.01.040(a)(5)(D) (the "Exemption"). The Exemption provides that Chapter 5.01 shall not apply to "Operations or facilities that chip or grind wood wastes, unless such wastes are processed for composting."*

Metro Response to Wuest Comment #1: As explained above in Metro’s response to Mr. Garrett’s comment #2, staff recommends withdrawing the initial proposal and not changing the current licensing exemption for certain wood waste operations and electronic waste processing facilities at this time.

IV. Cusma Comments (refer to attached letter dated April 28, 2016):

- Cusma Comment #1: *Metro Code Chapter 5.00 - Metro proposes adding “clean fill” as a new defined term. Metro’s rationale for adding this new definition is unclear, particularly given that Metro’s proposed changes to Chapter 5.00 are intended to “[d]elete . . . unnecessary or unused terms.” The only place Metro proposes to use the new term is in the revised definition of “cleanup material.” Metro could achieve the same result without adding “clean fill” as a new defined term.*

The issue with adding “clean fill” as a defined term is that it is unclear how clean fill would be regulated under the solid waste code. For example, it is unclear whether clean fill falls within the definition of “solid waste.” Relatedly, the definition of “non-putrescible waste” explicitly includes “construction and demolition waste” but explicitly excludes “cleanup material, source separated recyclable materials, special waste, land clearing debris or yard waste.” This definition leaves unclear whether clean fill is non-putrescible waste. Whether clean fill falls within the definition of “solid waste” and/or “non-putrescible waste” will affect how clean fill is treated under various provisions of the solid waste code.

Schnitzer Steel encourages Metro to reconsider its decision to add “clean fill” as a new defined term. If Metro decides to retain the proposed definition, Schnitzer

Steel encourages Metro to better explain how clean fill will be regulated under the solid waste code.

Metro Response to Cusma Comment #1: The new term “clean fill” was added to Chapter 5.00 to provide clarification for the Metro definition of “cleanup material” and to clarify the types of waste that qualify for Metro’s reduced regional system fee and excise tax. Clean fill is inert material and is regulated as such under Metro Code. Inert material that is used beneficially or disposed in an inert landfill is exempt from Metro’s regional system fee and excise tax. Furthermore, a facility that exclusively receives, processes, transfers, or disposes of inert waste is exempt from Metro’s licensing requirements.

- Cusma Comment #2: *Metro Code Chapter 5.00 - Metro proposes changes to the definitions of “designated facility” and “Metro designated facility.” The proposed definitions are:*
 - *“‘Designated facility’ means a facility that Metro designates as part of the system designated pursuant to Chapter 5.05.”*
 - *“‘Metro designated facility’ means a facility in the system of solid waste facilities and disposal sites that Metro authorizes under Chapter 5.05 to accept waste generated within the jurisdiction of Metro.”*

It is unclear whether Metro intends for these terms to have different meanings. If Metro intends for both terms to have the same meaning, Metro should consistently use one of the terms throughout the solid waste code and remove the other term. If Metro intends for the terms to have different meanings, Schnitzer Steel encourages Metro to better explain the difference between the two terms.

Metro Response to Cusma Comment #2: Staff recommends retaining the current term “designated facility” and deleting the term “Metro designated facility.” Metro intends for both terms to have the same meaning. Staff agrees that a consistent term should be used throughout Metro Code. Refer to Revision No. 2 in Exhibit A.

- Cusma Comment #3: *Metro Code Chapter 5.01 - In its proposed revisions to Chapter 5.01 of the Metro Code, Metro proposes to require facilities to obtain a solid waste license if they shred, mill, pulverize, or store outdoors any electronic waste. Chapter 5.00 does not define the term “electronic waste.” Schnitzer Steel urges Metro to replace references to “electronic waste” with “covered electronic device waste,” based on a term that is used in ORS chapters 459 and 459A. This would better align the solid waste code with ORS chapters 459 and 459A.*

Consistent with ORS 459A.305(4), Schnitzer Steel recommends that Metro define “covered electronic device” as follows:

“Covered electronic device” means (1) a computer monitor of any type having a viewable area greater than four inches measured diagonally; (2) a desktop computer or portable computer; (3) a television of any type having a viewable area greater than four inches measured diagonally; (4) a computer peripheral; or (5) a printer. This term does not include (a) any part of a motor vehicle; (b) any part of a larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, such as diagnostic, monitoring or control equipment; (c) telephones or personal digital assistants of any type unless the telephone or personal digital assistant contains a viewable area greater than four inches measured diagonally; or (d) any part of a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier.

Because the term “waste” is separately defined in Chapter 5.00, a separate definition of “covered electronic device waste” is unnecessary.

If Metro is unwilling to replace “electronic waste” with “covered electronic device waste,” Schnitzer Steel urges Metro to define “electronic waste” in Chapter 5.00. The definition should exclude at least those categories of material described in (a) through (d) of the definition of “covered electronic device waste” proposed above. These exclusions would limit the definition of “electronic waste” to include only those materials commonly understood to constitute electronic waste. This will provide certainty to regulated entities and avoid unintended consequences.

Metro Response to Cusma Comment #3: Staff recommends adding the new term “electronic device” to Chapter 5.00 using the definition for “covered electronic device” as defined in ORS 459A.305(4). Staff agrees that Metro should clearly define what constitutes electronic waste for purposes of the Metro Code. Refer to Revision No. 3 in Exhibit A.

In addition to the above, staff recommends not changing Metro’s current licensing exemption for certain facilities that process electronic waste pending further evaluation by Metro. Staff recommends changing Section 5.01.030 (Prohibited Activities) to include a new provision prohibiting the outdoor storage of “electronic devices” at solid waste facilities. Refer to Revisions Nos. 7 and 10 in Exhibit A.

- Cusma Comment #4: *Metro Code Chapter 5.00 - Metro proposes to delete the definitions of the terms “Metro disposal system” and “Metro waste management system.” However, these terms still appear in other portions of the solid waste code. Further, as currently defined, these two terms do not have the same meaning, nor are they synonymous with the proposed definition of “system.”*

As one example, the proposed definition of the term “regional transfer charge” is “a fee that pays the direct unit operating costs of the Metro transfer stations. This fee is imposed upon all solid waste deliveries to Metro disposal system facilities.” (Emphasis added.) Without a definition for “Metro disposal system”

or “disposal system,” it is unclear on which solid waste deliveries Metro would impose the regional transfer charge.

As another example, the proposed definition of the term “regional system fee” is “a fee that pays Metro waste management system costs.” (Emphasis added.) The term “waste management system” also appears in Section 5.02.120(a), which provides: “The regional system fee is the dollar amount per ton of solid waste adopted by Council ordinance for the purpose of paying for Metro waste management system costs.” (Emphasis added.) Without a definition for “Metro waste management system” or “waste management system,” it is unclear which costs would be paid by the regional system fee.

Metro Response to Cusma Comment #4: Staff finds the terms “Metro disposal system,” “regional transfer charge,” and “Metro waste management system,” to be unnecessary and recommends deleting the terms from Chapter 5.00 and removing the reference to “regional transfer charge” from proposed Section 5.02.060(a). The term “Metro disposal system” is currently used only in Chapter 5.00 in reference to the definition for “regional transfer charge.” The term “Metro disposal system” does not appear anywhere else in Title V. Similarly, the term “regional transfer charge” appears only once in current Metro Code Section 5.02.027(a) and is not used anywhere else throughout Title V. Regional transfer charges were repealed from Metro Code by Ordinance No. 94-531 in 1994 (repealed Section 5.02.050). Refer to Revision No. 16 in Exhibit A.

With respect to the term “Metro waste management system,” the term is currently used only in Chapter 5.00 for the definition for “regional system fee.” The term “Metro waste management system” does not appear anywhere else in current Title V. The term was mistakenly added as part of the proposed changes to Metro Code Section 5.02.120(a). Staff recommends deleting the unnecessary term “Metro waste management system” as proposed and subsequently combining its definition with that of the term “regional system fee” for further clarification. Staff also recommends similar revisions to proposed Section 5.02.120(a) for consistency purposes. Refer to Revisions Nos. 4 and 17 in Exhibit A.

- Cusma Comment #5: *Metro Code Chapter 5.00 - Metro proposes to delete the definition of the term “standard recyclable materials.” This definition is used elsewhere in the solid waste code (e.g., Secs. 5.10.080(a); 5.10.230(a)(2), (b), and (c); and 5.10.240(b)(1)) and should not be deleted.*

Metro Response to Cusma Comment #5: Staff agrees and recommends retaining the current term “standard recyclable materials.” Refer to Revision No. 5 in Exhibit A

- Cusma Comment #6: Metro Code Chapter 5.01.010 - Metro proposes to revise and expand the purposes of Chapter 5.01. Metro suggests that the changes are meant to incorporate the “six public benefits” from Metro’s Solid Waste Roadmap. Metro also proposes to revise and expand the purposes of Chapter 5.05 to incorporate the six public benefits (see Paragraph IV.A below). Metro frequently refers to the six public benefits during meetings related to the proposed changes to the solid waste code. Metro does not, however, consistently define or describe the six public benefits. As one example, the proposed description of the six public benefits in Section 5.01.010 is different than the proposed description of the six public benefits in Section 5.05.010. As another example, in a PowerPoint created by Metro for a September 2015 workshop, Metro explained that one of the six public benefits is to “[p]rovide good value.” However, “good value” does not appear in the Section 5.01.010 or Section 5.05.010.

If Metro is going to rely on a particular set of public benefits to guide solid waste regulation and interpretation of the solid waste code, Metro should clearly and consistently articulate those benefits. Schnitzer Steel understands Metro entertained significant stakeholder input to develop and define the six public benefits articulated in the Solid Waste Roadmap, and they should not be modified to support varying goals.

Metro Response to Cusma Comment #6: Staff recommends withdrawing the initial proposal and not making any substantive changes to the current purpose section at this time. Staff recommends non-substantive housekeeping changes to this section to improve clarity, consistency, and ease of reading. Refer to Revisions No. 6 and 18 in Exhibit A.

- Cusma Comment #7: Metro Code Section 5.01.040(a) - Schnitzer Steel believes strongly that scrap metal and similarly situated recyclable materials with intrinsic value, well-established markets, incoming material quality guidelines, and outgoing material specifications should be managed as commodities rather than subjected to regulation as “solid waste.” The Oregon Legislature defined “solid waste” to mean:

[A]ll useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

ORS 459.005(24) (emphasis added). That means a material must be either useless or discarded before it is considered a solid waste under state law.

Schnitzer Steel receives recyclable materials—scrap metal in various forms—that are neither useless nor discarded by the end user. Rather, scrap metal items are typically kept out of the solid waste stream and sold to Schnitzer Steel or an intermediate scrap dealer. Schnitzer Steel, in turn, treats that material as a valuable commodity — collecting, sorting, and processing the scrap to meet specific, internationally-recognized specifications, and generally managing the material to maximize its value in the market.

Two of the specific types of solid waste listed in the state definition above are “discarded or abandoned vehicles or parts thereof” and “discarded home and industrial appliances.” ORS 459.005(24). Metro’s definition of “solid waste” includes identical categories. Because Metro’s solid waste definition uses the same language found in ORS 459.005(24), it is logical to interpret these categories in the Metro definition consistent with ORS 459.005(24).

Vehicles, vehicle parts, and appliances are primary types of materials received by Schnitzer Steel. These materials are not useless, discarded, or abandoned; rather, they are valuable materials that have been intentionally segregated from other materials that enter the solid waste stream. The legislature has specifically recognized that certain types of scrap metal, including end-of-life vehicles, vehicle parts, and appliances, do not routinely enter the solid waste stream. ORS 459A.010(3).

As a result of these and other considerations, Metro has long recognized single-stream recycling facilities, such as Schnitzer Steel, as a unique category of commercial recycling facility, and has considered them exempt from solid waste facility licensing requirements. Unfortunately, however, the unique character of single-stream recycling facilities is not recognized with a unique exemption that applies only to this type of recycling facility—that is, Subsection 5.01.040(a) does not include a specific exemption for single-stream recycling facilities. Instead, these facilities are subsumed within other, broader exemptions. Single-stream recycling facilities often fall within the exemption applicable to facilities that receive non-putrescible source-separated recyclable materials (Section 5.01.040(a)(3)) or various other exemptions contained in Section 5.01.040(a), but the materials sent to these facilities typically are not “separated” from the waste stream because they never enter the waste stream in the first place.

Schnitzer Steel encourages Metro to take this opportunity to clarify the exemption applicable to single-stream recycling facilities by adopting a single, narrowly tailored exemption that covers all such facilities. This is important because the rationale for exempting these single-stream recycling facilities is

specific to these types of facilities. Single-stream recycling facilities like Schnitzer Steel receive a single type of recyclable material (for Schnitzer Steel, scrap metal in various forms). Single-stream recyclable materials generally have intrinsic value, well-established markets, incoming material quality guidelines, and outgoing material specifications. As such, these types of recyclable materials are managed by both the recycling facility and end user as a commodity, not a solid waste.

Schnitzer Steel suggests the following description for the new exemption: "Facilities that (A) exclusively receive single-stream recyclable materials, and (B) reuse or recycle those materials, or transfer, transport or deliver those materials to a person or facility that will reuse or recycle them."

Metro would also need to add a new definition for "single-stream recyclable material" to Section 5.00.010. Schnitzer Steel suggests the following definition:

"Single-stream recyclable material" means recyclable material that (i) has been isolated as a single material type (e.g., a specific type of standard recyclable material) for the purpose of recycling, or (ii) is predominantly made up of a single material type for which mechanical processing is necessary to further separate component types of recyclable materials.

Metro Response to Cusma Comment #7: Staff does not recommend adding the suggested changes as part of the proposed updates at this time. Staff will consider the comment in conjunction with any recommendations that may result from the SWAAC subcommittee that is currently evaluating facilities that exclusively receive source-separated recyclable materials.

- Cusma Comment #8: Metro Code Section 5.01.050(a)(6) - Metro proposes to require a solid waste license for all facilities that shred, mill, pulverize, or store outdoors any electronic waste (see Section 5.01.050(a)(6)). Schnitzer Steel urges Metro to replace the term "electronic waste" with "covered electronic device waste" (see Paragraph I.C above).

As proposed, the licensing requirement would apply quite broadly to facilities that shred, mill, pulverize, or store outdoors any electronic waste, which could arguably include small circuit boards or other electronic components contained inside any appliance with digital controls or a potentially unidentified printer inside a large load of scrap, as examples. This could have the unintended consequence of requiring licenses for facilities that incidentally shred, mill, pulverize, or store outdoors small quantities of electronic waste (or covered electronic device waste). To avoid this unintended consequence, Schnitzer Steel encourages Metro to add the following exemption to Section 5.01.040(a): "Facilities that incidentally shred,

mill, pulverize, or store outdoors small quantities of electronic waste [or covered electronic device waste].”

Metro Response to Cusma Comment #8: Refer to Metro’s response to Cusma Comment #3 above. Staff does not recommend adding the suggested reference to “incidental quantity” as part of the proposed revision.

- Cusma Comment #9: *Metro Code Section 5.01.080(e) - Under the current solid waste code, if Metro’s Chief Operating Officer (“COO”) fails to grant or deny a license application within 120 days, the license is deemed granted. Metro proposes to eliminate this requirement and replace it with a process under which the applicant may request the Metro Council to direct the COO to act on the license if the COO fails to act within 120 days.*

Metro does not provide adequate justification for this change. The change would reduce the incentive for the COO to expeditiously review and act on license applications. Metro has not identified any instance in which the 120-day deadline has caused the COO to grant or deny a license application that otherwise would have been processed differently. Therefore, Schnitzer Steel opposes this proposed change.

Metro Response to Cusma Comment #9: Refer to Metro’s response to Mr. Garrett’s comment #3 above.

- Cusma Comment #10: *Metro Code Section 5.01.110 - The proposed revision to Subsection (a) is confusing when read together with Subsection (d). Proposed Subsection (a) reads: “The [COO] may approve or deny a license renewal of a solid waste facility.” As written, this provision suggests that the COO has complete discretion to approve or deny a license. However, proposed Subsection (d) reads: “The [COO] must approve a solid waste facility license renewal unless” Subsection (a) would be more clear if it read: “The [COO] will review a license renewal and approve or deny it consistent with this section.”*

Metro Response to Cusma Comment #10: Staff agrees that Metro should clarify the language of the proposed subsection. Staff recommends revising subsection (a) to clarify its intent that the Chief Operating Officer will approve or deny licenses as provided in Code. Refer to Revision No. 12 in Exhibit A.

- Cusma Comment #11: *Metro Code Section 5.01.180(g) - Similar to the proposed changes to Subsection 5.01.080(e) (discussed above), under the current solid waste code, if the Metro Council fails to grant or deny a franchise application within 120 days, the franchise is deemed granted. Metro proposes to eliminate the automatic grant of a franchise.*

Metro does not provide adequate justification for this change. The change would reduce the incentive for the Metro Council to expeditiously review and act on franchise applications. Subsection (h)(3) already allows for an extension of the 120-day deadline by mutual agreement of the applicant and the COO. This extension process is adequate to address situations in which the Metro Council is unable to act on a franchise application within 120 days. Metro has not identified any instance in which the 120-day deadline has caused the Metro Council to grant or deny a franchise application that otherwise would have been processed differently. Therefore, Schnitzer Steel opposes this proposed change.

Metro Response to Cusma Comment #11: Refer to Metro's response to Mr. Garrett's Comment #3 above. Staff recommends similar revisions to Section 5.01.180(g).

- Cusma Comment #12: *Metro Code Section 5.01.280 - Metro proposes to modify the COO's authority to adopt and amend rules, performance standards, procedures, and forms. The proposed title of Section 5.01.280 is: "Adoption and Amendment of Administrative Rules and Performance Standards." The title would more closely align with the substantive provisions of the section if it read: "Adoption and Amendment of Rules, Performance Standards, Procedures and Forms." Although the title of Section 5.01.280 makes clear that Metro intends the substantive provisions of the section to apply to both adoption and amendment of rules, performance standards, procedures, and forms, the section's substantive provisions refer to adoption but not amendment. To clarify the scope of Section 5.01.280, Metro should revise the section's substantive provisions to refer to both adoption and amendment.*

The proposed changes to the substantive provisions of Section 5.01.280 include new procedural protections. These proposed changes provide greater protection to licensees and franchisees, but some of the other proposed changes to the section would arguably expand Metro's rulemaking authority. The proposed changes are discussed in more detail below.

Metro Response to Cusma Comment #12: Staff recommends revising the titles for each of the administrative rulemaking sections in Metro Code Chapters 5.01, 5.02, and 5.05 to read "Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms." Staff also recommends additional changes to the section to further clarify that the provisions apply to adoption and amendment of administrative rules and standards. Metro intends to have identical sections in each of the above-mentioned chapters for consistency. Refer to Revision No. 21 in Exhibit A

Staff does not recommend including the term "administrative procedures" in the proposed section. An "administrative procedure" is the process by which a rule is

adopted. Metro intends to use the term “administrative rule” going forward to reduce confusion and improve consistency. Using the term “rule” is more consistent with the practice of other governmental regulatory bodies such as Oregon Department of Environmental Quality.

- Cusma Comment #13: *Metro Code Section 5.01.280 - Under current Section 5.01.132, the COO’s rulemaking authority is limited to issuing “administrative procedures and performance standards governing the obligations of licensees and franchisees.” (Emphasis added.) In contrast, proposed Section 5.01.280 is ambiguous about whether the COO’s rulemaking authority extends to operators of exempt facilities. Subsection 5.01.280(a) provides: “The [COO] may adopt rules, performance standards, procedures and forms to implement any provision of this chapter. Any rule, performance standard, procedure and form adopted under this section has the same force and effect as any other chapter provision.”*

Schnitzer Steel encourages Metro to clarify that the rules, performance standards, procedures, and forms adopted by the COO apply only to licensees and franchisees.

Metro Response to Cusma Comment #13: Staff does not recommend making the suggested changes as part of the proposed updates. The Chief Operating Officer has authority to adopt any rule to implement the provisions of Chapters 5.01, 5.02, and 5.05. Therefore, the proposed rule making authority does not apply exclusively to a licensee or franchisee.

- Cusma Comment #14: *Metro Code Section 5.01.280 - Subsection 5.01.280(b) would require the COO to provide a 30-day public comment period before adopting any rules or performance standards. However, as proposed, this requirement does not explicitly extend to procedures and forms adopted under Section 5.01.280. Because these procedures and forms will have “the same force and effect as any other chapter provision,” the procedures and forms should also be subject to a 30-day public comment period.*

Subsection 5.01.280(b) is silent regarding the type of notice Metro must provide regarding the public comment period. Metro should revise the subsection to require notice in a manner reasonably calculated to reach interested parties. Metro could address these suggestions by replacing the first sentence of Subsection 5.01.280(b) with the following:

Before the Chief Operating Officer adopts or amends a rule, performance standard, procedure or form under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. Metro will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description

of the proposed rule, performance standard, procedure or form; the location at which a person may obtain copies of the full text of the proposed rule, performance standard, procedure or form; the method for submitting comments; and the deadline for submitting public comments.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(b) and 5.05.260(b).

Metro Response to Cusma Comment #14: Staff does not recommend including the terms “form” and “administrative procedures” as part of the public hearing section in the proposed updates. As stated in Metro’s response to Mr. Cusma’s Comment #12, Metro intends to replace the term “procedure” with “rule” to more accurately reflect that an “administrative procedure” describes the process by which a rule is adopted, including providing notice of and the opportunity to comment on a proposed rule. This change will reduce confusion and better align Metro’s rule making process and terminology with that of other regulatory agencies, including the DEQ.

With respect to “forms,” staff finds that it is unnecessary to hold a public hearing regarding the rather ministerial procedure of creating a form.

Staff agrees that Metro should clarify the language of the proposed subsection with respect to general notice procedures. Staff recommends revising the subsection to clarify the type of notice, submittal method, and deadline for comments. Refer to Revision No. 21 in Exhibit A.

- Cusma Comment #15: *Metro Code Section 5.01.280 - Subsections 5.01.280(b) and (c) include requirements related to public hearings. As proposed in Subsection 5.01.280(b), the COO “may...hold a public hearing on any proposed rule or performance standard if the [COO] determines that there is sufficient public interest in the proposed rule or performance standard.” (Emphases added.) This would vest complete discretion in whether to hold a public hearing with the COO and undermines the procedural protection that a public hearing would provide.*

Schnitzer Steel encourages Metro to strengthen this procedural protection by requiring public hearings under certain circumstances and expanding the scope of the public hearing provision to cover proposed procedures and forms. Schnitzer Steel suggests replacing the last sentence of Subsection 5.01.280(b) with the following:

The Chief Operating Officer may hold a public hearing on any proposed rule, performance standard, procedure or form if the Chief Operating Officer determines that there is sufficient public interest in the proposed rule, performance standard, procedure or form. The Chief Operating Officer will hold a public hearing if the Chief Operating Officer (i) determines or receives evidence

showing that the proposed rule, performance standard, procedure or form could have a material economic impact on a licensee or franchisee, or (ii) receives at least five written requests for a public hearing.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(b) and 5.05.260(b).

Metro Response to Cusma Comment #15: Staff does not recommend including the terms “form” and “administrative procedures” as part of the public hearing section in the proposed updates. As explained above in Metro’s response to Mr. Cusma’s comment #12, the term “procedures” is unnecessary because Metro intends to use the term “rule” going forward. Additionally, public hearings are not necessary for certain administrative matters such as creating and changing forms.

Staff recommends revising the subsection to clarify that Metro will always hold a public hearing for a new or amended rule or performance standard that is adopted under the proposed rulemaking procedures. Refer to Revision No. 21 in Exhibit A.

- Cusma Comment #16: *Metro Code Section 5.01.280 - Subsection 5.01.280(d) provides that, unless otherwise stated, all rules and performance standards take effect when the COO adopts them. This does not provide a sufficient opportunity to challenge the rules and performance standards before they become effective. Absent a serious danger to public health or safety, it is unnecessary for any proposed rule, performance standard, procedure or form to take effect sooner than 60 days following adoption.*

Schnitzer Steel suggests replacing Subsection 5.01.280(d) with the following:

All rules, performance standards, procedures and forms adopted or amended under this section will take effect 60 days after adoption or amendment by the Chief Operating Officer, unless (i) the Chief Operating Officer specifies an earlier effective date after determining that failure to immediately implement the rule, performance standard, procedure or form would create a serious danger to the public health or safety, or (ii) the Chief Operating Officer specifies a later effective date.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(b) and 5.05.260(b).

Metro Response to Cusma Comment #16: Staff recommends revising the subsection to establish a waiting period of at least 30 days after adoption before a rule or standard takes effect. Staff agrees that the public should have an opportunity to review and understand all newly adopted and amended rules and standards before they become effective. Refer to Revision No. 21 in Exhibit A.

- Cusma Comment #17: Metro Code Section 5.01.280 - Subsection 5.01.280(e) would allow the COO to circumvent the public notice and comment process when adopting interim rules and performance standards. To adopt an interim rule or performance standard, the COO must find that “failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party.” This is a vague standard and arguably creates a lower threshold than the “serious danger” standard contained in other sections of Chapter 5.01.

Schnitzer Steel suggests replacing Subsection 5.01.280(e) with the following:

Notwithstanding subsections (b) and (d) of this section, the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice or comment or opportunity for a public hearing only if the Chief Operating Officer finds that failure to act immediately will result in serious danger to the public health or safety. The Chief Operating Officer must explain, in writing, the basis for adopting the interim rule or performance standard. Any rule or performance standard adopted pursuant to this subsection takes effect upon adoption and expires no later than 180 days from its effective date.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(e) and 5.05.260(e).

Metro Response to Cusma Comment #17: Staff does not agree with the suggested revision and does not recommend replacing the phrase “serious prejudice to the public interest” with “serious danger to the public health and safety” in this section. However, staff agrees that Metro should provide a written explanation of any interim rule or standard that is adopted under the proposed provision. Staff recommends revising the subsection to clarify such requirement. Refer to Revision No. 21 in Exhibit A.

- Cusma Comment #18: Metro Code Section 5.01.290(a) - Subsection 5.01.040(c) provides that certain exempt activities and facilities are subject to Section 5.01.290, which relates to inspections and audits. This authority is intended to allow Metro to inspect and audit certain exempt activities and facilities for the limited purpose of confirming that those activities and facilities qualify for the claimed exemption. Schnitzer Steel recommends that Metro add the following sentence at the end of Subsection 5.01.290(a) to clarify the relationship between Subsection 5.01.040(c) and Subsection 5.01.290(a): “The Chief Operating Officer is authorized to inspect, audit, or otherwise investigate activities and facilities described in Subsections 5.01.040(a)(3) through (a)(9) only to confirm that such activity or facility is exempt under Section 5.01.040.”

Metro Response to Cusma Comment #18: Staff does not recommend making the suggested change. The Chief Operating Officer has authority to inspect and audit solid waste facilities as necessary to assure compliance with Metro Code, Chapter 5.01, and all rules and standards adopted in accordance with the chapter.

- Cusma Comment #19: *Metro Code Section 5.01.320(f) - This subsection relates to the effect of Metro’s revocation of, or refusal to renew, a franchise or license. As proposed by Metro, this subsection would read: “If Metro revokes or refuses to renew a franchise or license, all franchisee or licensee rights in the franchise or license become void.” The phrase “or refuses to renew” should be deleted from this subsection for at least two reasons. First, Section 5.01.320 relates to the suspension, modification, and revocation of licenses and franchises, not the refusal to renew a license or franchise. Second, as written, subsection (f) is inconsistent with subsection 5.01.340(b), which provides that the COO’s refusal to renew a license does not become effective until Metro affords the franchisee or licensee an opportunity for a contested case hearing (unless necessary to avoid serious danger to the public health or safety).*

Metro Response to Cusma Comment #19: Staff agrees that Metro should clarify the language of the proposed subsection. Staff recommends removing the phrase “or refuses to renew” as suggested. Refer to Revision No. 14 in Exhibit A.

- Cusma Comment #20: *Metro Code Section 5.02.050(a) - Metro proposes adding the following sentence to Subsection 5.02.050(a): “‘Source separated recyclable material’ has the same meaning as defined in ORS 459.005.” This statement is not correct because ORS 459.005 does not define “source separated recyclable material.” The term is, however, defined in Section 5.00.010.*

Metro Response to Cusma Comment #20: The draft proposal mistakenly included a reference to ORS 459.005 in the above-mentioned section. Staff recommends removing the reference to ORS 459.005, replacing the term “recyclable material” with “standard recyclable materials,” and other minor revisions to clarify which types of materials qualify for a disposal charge credit at Metro’s transfer stations. Refer to Revision No. 15 in Exhibit A.

- Cusma Comment #21: *Metro Code Section 5.02.060(a) and 5.0.080(f)(4) - References in these subsections to “enhancement fee” should be replaced with “community enhancement fee” to align these subsections with Metro’s proposed changes to definitions in Section 5.00.010.*

Metro Response to Cusma Comment #21: Staff recommends replacing all references to “enhancement fee” with the term “community enhancement fee” throughout Chapters 5.00, 5.01, 5.02, and 5.05. Additionally, staff recommends including the term “enhancement fee” as part of the definition of “community enhancement fee”

to clarify that both terms have the same meaning in case the terms are used interchangeably in other chapters of Title V. Refer to Revision No. 1 in Exhibit A.

- Cusma Comment #22: *Metro Code Section 5.02.170 - See proposed changes to this section in Paragraphs II.F.2 through II.F.5 above.*

Metro Response to Cusma Comment #22: Refer to Metro's response to Cusma Comments #14 through #17 above. Staff recommends similar revisions to Chapter 5.02.

- Cusma Comment #23: *Metro Code Section 5.05.010 - Metro proposes to revise and expand the purposes of Chapter 5.05. Metro suggests that the changes merely incorporate the "six public benefits" from Metro's Solid Waste Roadmap (similar to the proposed changes to Chapter 5.01). However, the six public benefits listed in Chapter 5.05 are not identical to the six public benefits listed in Chapter 5.01. (See Paragraph II.A above for further discussion regarding this issue.)*

Metro Response to Cusma Comment #23: Staff recommends withdrawing the initial proposal and not making any substantive changes to the current purpose section at this time. Staff recommends non-substantive housekeeping changes to this section to improve clarity, consistency, and ease of reading. Refer to Revisions No. 6 and 18 in Exhibit A.

- Cusma Comment #24: *Metro Code Section 5.05.020(c) - Metro proposes to revise the description of the authority under which it regulates under Chapter 5.05. The current solid waste code states that Metro is exercising its authority under ORS 268.317 and ORS 268.360. Metro proposes to replace the references to those specific statutory sections with a generic reference to ORS chapter 268. This is arguably a substantive change because ORS 268.317 is limited to solid and liquid waste disposal powers and ORS 268.360 relates to Metro's authority to enact and enforce ordinances. In contrast, other sections of ORS chapter 268 would grant broader powers to Metro (e.g., ORS 268.310(6) authorizes Metro to "[e]xercise jurisdiction over other matters of metropolitan concern as authorized by [the Metro] charter"). If Metro intends to rely on statutory grants of authority beyond ORS 268.317 and ORS 268.360, Metro should do so explicitly and provide an adequate justification for the exercise of broader statutory authority.*

Metro Response to Cusma Comment #24: Staff does not agree with the commenter and recommends retaining the changes as initially proposed. Including a reference to ORS Chapter 268 in Section 5.05.020(c) does not "broaden" Metro's authority. ORS Chapter 268 reflects the statutory authority that the legislature has conferred upon Metro. Referencing Metro's statutory authority in Metro code does not "broaden" or otherwise expand that authority. Further, the proposed change better aligns this section with current section 5.05.030, which is entitled "Authority,

Jurisdiction and Application,” and which states in subsection (a) that “Metro’s solid waste flow control authority is derived from ORS chapter 268 for solid waste and the Metro Charter.”

- Cusma Comment #25: *Metro Code Section 5.05.050(a) - This subsection provides an exemption from the general requirement to obtain a non-system license in order to transport, or cause to be transported, solid waste generated within Metro to any solid waste facility or disposal site. The exemption applies to “non-putrescible source separated recyclable materials that are either: (i) reused or recycled, or (ii) transferred, transported or delivered to a person or facility that will reuse or recycle them.” As currently drafted, it is somewhat unclear at what point the exemption begins to apply. However, the clear intent of the exemption is that it applies to source separated recyclable materials from the point of source separation, provided the materials will be reused or recycled or transferred, transported, or delivered to a person or facility that will reuse or recycle them. Metro should revise this subsection to ensure it is implemented as intended.*

Metro could clarify the intent of the exemption by adding a sentence to the end of Subsection 5.05.050(a) that states: “This exemption applies from the point of source separation, provided the materials are ultimately: (i) reused or recycled, or (ii) transferred, transported or delivered to a person or facility that will reuse or recycle them.”

Metro Response to Cusma Comment #25: Staff does not recommend adding the suggested changes as part of the proposed updates at this time. Staff will consider the comment in conjunction with any recommendations that may result from the SWAAC subcommittee that is currently evaluating facilities that exclusively receive source-separated recyclable materials.

- Cusma Comment #26: *Metro Code Section 5.05.080(b)(6) - This subsection lists the factors the Metro Council may consider in deciding whether to remove a facility from Metro’s designated facilities list. Metro proposes to add a catchall factor: “Any other factor the Council considers appropriate.” This factor is broader than necessary to accomplish the purposes of Chapter 5.05. At a minimum, the catchall factor should be limited to “Any other factor necessary to accomplish the purposes of this chapter.” (Emphasis added.)*

Metro Response to Cusma Comment #26: Staff agrees that Metro should clarify the language of the proposed subsection. Staff recommends revising the subsection to better define the factors that the Metro Council will consider when deciding whether to remove a facility from Metro’s list of designated facilities. Refer to Revision No. 19 in Exhibit A.

- Cusma Comment #27: Metro Code Section 5.05.150(b) - *This subsection relates to the conditions the COO may impose on a new or renewed non-system license. Metro proposes to add language that would allow the COO to “impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as the [COO] considers necessary under the circumstances.” This grant of authority is more broad than necessary to accomplish the purposes of Chapter 5.05, and Metro has not provided sufficient justification for such a broad grant of authority. A more limited grant of authority would allow the COO to “impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as necessary to accomplish the purposes of this chapter.” (Emphasis added.)*

Metro Response to Cusma Comment #27: Staff agrees that Metro should clarify the language of the proposed subsection. Staff recommends revising the subsection to better define the factors the Chief Operating Officer will consider when determining non-system license conditions. Refer to Revision No. 19 in Exhibit A.

- Cusma Comment #28: Metro Code Section 5.05.260 - *See proposed changes to this section in Paragraphs II.F.2 through II.F.5 above.*

Metro Response to Cusma Comment #28: Refer to Metro’s response to Mr. Cusma’s comments #14 through #17 above. Staff recommends similar revisions to Chapter 5.05.

V. White Comment – the following is an excerpt from the commenter’s letter (refer to attached letter dated April 29, 2016):

- White Comment: Metro Code Chapter 5.00 - *Metro’s definition of Solid Waste should follow the state of Oregon’s definition by reinserting the words “useless and discarded” to clarify that the material is unwanted by the person last using it and deleting the words “commingled recyclable material” and “source-separated recyclable material” to clarify that the material has not been separated from solid waste for the purpose of recycling by the person last using it.*

Metro Response to White Comment: Staff does not recommend any additional changes to this section other than non-substantive housekeeping changes. The definition will remain as proposed.

VI. Jordan Comment (refer to attached letter dated April 29, 2016):

- Jordan Comment: Republic Services, Inc. *is unable at this time to provide constructive commentary regarding the proposed changes to Metro Code Chapters 5.00, 5.01 5.02 5.05 and 7.01. You have informed us that the “proposed changes seek greater consistency in how Metro reviews and authorizes solid waste facilities, great transparency in how Metro implements its requirements to protect the environment and the public health, and great adaptability to changing conditions, all while*

making the (Metro) Code easier to use and understand.” Our inability to comment at this time stems from the lack of a context upon which we can evaluate the ramifications resulting from a change in a provision of the Metro Code you are proposing.

David White, our representative with Oregon Refuse and Recycling Association (ORRA), recommended some time ago that the changes to the Metro Code proposed by you should be considered during the review of the Regional Solid Waste Management Plan. I believe this review will take place in next [sic] 12 to 18 months. Republic Services believes a more suitable process would be to adopt the evaluating of your proposed changes to Metro Code 5.00, 5.01 5.02 5.05 and 7.01 during the review of RSWMP which would provide the needed context.

Metro Response to Jordan Comment: The commenter did not provide comments on the content of the proposed changes. Staff recommends updating and revising Metro Code Chapters 5.00, 5.01, 5.02, and 5.05 as proposed.

Warren Johnson

From: Chris Bell [Chris@Bellassociatesinc.com]
Sent: Saturday, February 20, 2016 10:28 AM
To: Warren Johnson
Subject: RE: Proposed Changes to Metro Code Title V (Solid Waste)

Categories: CODE COMMENTS

Warren,

The one area of interest for me and for my municipal clients is the rate charged by other disposal facilities. Section 310 – Determination of Rates, starts to address the issue, but is so weak you might as well forget the changes.

Here is my proposed change: If the total rate* varies within 5% of the current Metro tip, licensee **must** substantiate the cost of service. The cost of service includes the costs of transfer, transport, and disposal.

* Total rate includes the posted tipping fee plus any scalehouse, environmental, or transaction fees.

The key word is must. What I am finding is the transaction fee / environmental fee charged by some licensees is adding an additional \$2 to \$5 per ton to the total cost. This charge, combined with their tipping fee, puts some facilities higher than Metro by more than 5%.

Chris

Chris Bell
Bell & Associates, Inc.
Phone 360-210-4344
Mobile 360-773-7676

From: Warren Johnson [<mailto:Warren.Johnson@oregonmetro.gov>]
Sent: Friday, February 19, 2016 2:44 PM
To: Warren Johnson <Warren.Johnson@oregonmetro.gov>
Subject: Proposed Changes to Metro Code Title V (Solid Waste)

Good afternoon. You are receiving this email because you have previously expressed interest in receiving information about updates to Metro's solid waste code.

I am writing to notify you that Metro staff will present a proposal to the Solid Waste Alternatives Advisory Committee (SWAAC) at its [meeting](#) on February 25 to review and discuss proposed improvements and housekeeping changes to the Metro Solid Waste Code (Title V). If SWAAC generally agrees with the proposed changes, a formal public comment period will follow, during which time the public is welcome to submit comments, questions, and suggestions that will be included in the public record and provided to the Metro Council for its consideration.

Written materials associated with the proposed code changes are available on the Metro [website](#). These draft materials include a summary of the proposed changes and multiple "redline" documents that show the proposed amendments to the code by section. At the top of each "redline" document is a guide to reading it.

The key element of the guide is that substantive changes are highlighted in yellow and non-substantive ones are in gray.

Please contact me if you have questions. Thank you.

Warren Johnson
Solid Waste Compliance Supervisor
Property and Environmental Services

Metro
600 NE Grand Av
Portland, OR 97232-2736
503-797-1836
warren.johnson@oregonmetro.gov

Metro | Making a great place
www.oregonmetro.gov

**Terrell Garrett
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208-4483
(503) 793-9238
14 March 2016**

Metro Council Members
Warren Johnson
600 NE Grand Ave.
Portland, OR 97232

Re: Metro Solid Waste Code Updates

Dear Council Members and Mr. Johnson:

GreenWay Recycling would like to comment on the proposed Solid Waste Code Updates as follows:

Metro Code Chapter 5.00 (Solid Waste Definitions)

“Recoverable Solid Waste” attempts to define products based upon their acceptance or rejection by Metro’s facilities without regard to the marketplace and competing facilities abilities to quite frankly “do a better job” than Metro’s facilities. This definition should be expanded to include all system licensed or franchised facilities.

Metro Code Chapter 5.01 (Solid Waste Facility Regulation)

5.01.040 (a) (D) Comment A16 “Remove licensing exemption for wood waste processing operations and facilities.” Under Council guidance the SWAC has formed a subcommittee which is charged with recommending to Council whether or not “clean MRF’s” and other source-separated recycling facilities should be regulated by Metro. It would seem that Staff is circumventing the process assigned by Council to the subcommittee. This subject should be reviewed by the SWAC subcommittee as part of their process.

5.01.080 (e) Comment A52 “Remove automatic granting of a license if the Chief Operating Officer does not act on the application within 120 days.” This removal removes accountability and surety that the Chief Operating Officer will act reasonably and expeditiously on applications. Yes, there is appeal to the Council President, however that appeal at minimum adds substantive time to the application process and at maximum causes the application to “die in process” due to lack of Council President action. This

creates a situation of uncertainty for businesses which is unacceptable and contrary to the concept of responsible, respondent government.

5.01.280 “Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms.” Conceptually, the movement of Metro toward the type of government with administrative rulemaking similar to that of State and Federal government is a good move. However, this process should be transparent. It is understood that certain administrative rules may not garner attention worthy of the cost and effort necessary for public hearing, but leaving the determination if a proposed rule is worth public hearing solely up to the Chief Operating Officer is outside the bounds of transparent government. The Chief Operating Officer is a person and subject to fault and error. There should be a “trigger” with which the public can force public hearings on proposed rulemaking, regardless of the opinion of the Chief Operating Officer. Further, there should be recognition that Metro is different than State Government, unique in the United States and elsewhere. Because of this uniqueness, Metro should adopt the good parts of Administrative Rulemaking and then look past to new levels of transparency and accountability. In doing so, Council should provide an appeal process through which decisions made by the human and therefore fallible Chief Operating Officer can be fully vetted and either affirmed or negated by the Council should adequate affected persons request such.

Metro Code Chapter 5.02 (Disposal Charges and User Fees)

5.02.170 “Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms.” Please refer to 5.01.280 above.

Metro Code Chapter 5.05 (Solid Waste Flow Control)

5.05.200 “Issuance of Required Use Orders.” The removal of the ability and right of waste haulers and other persons to choose a facility to patronize based upon cost, service, products offered, and convenience is not non-substantive as purported by Staff. What this does is it removes any surety that a business which is well run and provides a superior services can be assured of market success. This is a terrible idea which should be eliminated.

Summary

Primarily, the proposed Code updates are timely, well written and to comprise necessary housekeeping. There are a few areas which need some changes, however, in general it is a good, solid effort.

Sincerely,

Terrell Garrett
Managing Member

B L A C K

H E L T E R L I N E LLP

A T T O R N E Y S A N D C O U N S E L O R S A T L A W

PHILIP J. WUEST
DIRECT DIAL: (503) 417-2152
E-mail: pjw@bhlaw.com
Oregon and Washington

April 27, 2016

VIA E-MAIL ONLY TO WARREN.JOHNSON@OREGONMETRO.GOV

Metro Solid Waste Code Updates
Attn: Warren Johnson
600 N.E. Grand Ave
Portland, OR 97232

Reference: Proposed changes to Metro Code Title V, Chapter 5.01.040 to
remove exemption for certain wood waste processing
operations/facilities

Dear Mr. Warren:

I represent Mr. Jim Smith of Jim Smith Excavating and write this letter to express opposition to the proposed removal of the existing exemption in Metro Code 5.01.040(a)(5)(D) (the "Exemption"). The Exemption provides that Chapter 5.01 shall not apply to "Operations or facilities that chip or grind wood wastes, unless such wastes are processed for composting."

Jim Smith Excavating (JSE) and other similarly situated operators, including Wood Waste Management, LLC and McFarelane's Bark, Inc., manufacture "hogged fuel" from clean wood that is transported to the manufacturing facility by independent third parties. Those parties pay to drop the wood at the processing facility where it is used to manufacture hogged fuel. The fuel re-enters the stream of commerce as a new product, and is sold to independent third party facilities that are licensed to burn the hogged fuel to produce energy.

JSE has been manufacturing hogged fuel for over 20 years at its current location and has, over that time, contributed significantly to the beneficial management of would-be wood scrap by keeping it from ever entering the regional waste stream.

Metro's governing statutes recognize the beneficial nature of JSE's activities. Under ORS 268.310(1), Metro has broad authority to regulate solid and liquid wastes, subject to the requirements of ORS 459.005 to ORS 045, etc. ORS 459.007 specifically exempts certain



types of wood residue from coverage under ORS 459.005, including wood residue that is “exchanged by the generator of the wood residue for fair market value and is combusted as a fuel . . .” *ORS 459.007*. Legislative materials explain the policy behind the exemption. “Oregon law establishes a hierarchy for the management of solid waste. The first objective is to prevent the generation of waste. If that is not possible, reuse is the best option, followed by recycling, composting, and energy recovery.” *76th Oregon Legislative Assembly – 2011 Regular Session, Staff Measure Summary, Senate Committee on Rules*. ORS 459.007 “Excludes woody biomass that is combusted as a fuel by facility (sic) that has obtained a permit under ORS 468A.040 (air quality) from the definition of solid waste.” *76th Oregon Legislative Assembly, House Committee on Rules*.

The existing exemption in Metro’s code recognizes and implements the policy underlying Oregon’s approach to management of the waste stream. The existing exemption, without any interference from government, has allowed a secondary market in wood products and wood products manufacturing to develop and thrive, keeping marketable wood products out of the waste stream and putting them to secondary beneficial use.

There is simply no need change what is already working. The sole reason for the change cited in Metro’s materials is to “improve consistency”. *See page 2 of 4, Summary of Proposed Metro Code Title V Changes, February 12, 2016; See also, page 3 of 4 Comment 2(a) of Summary of Proposed Metro Code Title V Changes, February 29, 2016*. The matter appears to have been briefly discussed during the January 13, 2016 meeting SWAAC, see Item 6 on page 3, but there is no indication that the committee or anyone has considered the broader policy implications of the proposed code change to remove the Exemption. There is another mention of the issue in the meeting notes of the February 1, 2016, SWAAC/MRF/CT Subcommittee meeting notes, Item 3 on page 2, where Chair Brower notes that using wood waste to generate power does not clearly fit into Metro’s solid waste regulations, and that there are a “broader group of interests and views that should be heard, discussed and considered” so that the committee is well equipped to advise the Metro Council on the proposed changes. Staff again offered only the explanation that Metro’s code should be updated for consistency.

This letter specifically requests that the Committee not endorse or recommend the proposed removal of the Exemption, absent some compelling policy rationale. The Exemption has been in place for many years and, as a direct result, there is a robust and successful secondary market keeping wood out of the waste stream and putting it to beneficial use. Bringing these activities under Metro’s regulatory control “for the sake of consistency” is a weak rationale when the existing system is working now to achieve Oregon’s goals. As such, there is no need for the proposed change in Metro’s code to remove the Exemption. The Exemption is working.



Mr. Warren Johnson –Metro’s Solid Waste Code Update
April 27, 2016 – Page 3

Thank you for your consideration of this request and please do not hesitate to contact me for additional information.

Very truly yours,



Philip J. Wuest

Jim Smith Excavating:

Jim Smith

Wood Waste Management, In.

Rick Franklin

McFarlane’s Bark, Inc.:

Dan McFarlane

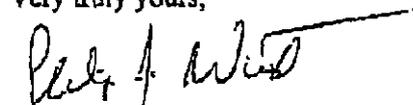
PJW:pjw
1144148



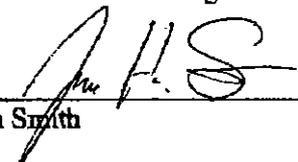
Mr. Warren Johnson -Metro's Solid Waste Code Update
April 27, 2016 - Page 3

Thank you for your consideration of this request and please do not hesitate to contact me for additional information.

Very truly yours,


Philip J. Wuest

Jim Smith Excavating:



Jim Smith

Wood Waste Management, In.

Rick Franklin

McFarlane's Bark, Inc.:

Dan McFarlane

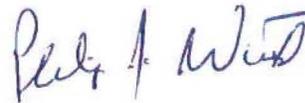
PJW:pjw
1194148

b

Mr. Warren Johnson –Metro’s Solid Waste Code Update
April 27, 2016 – Page 3

Thank you for your consideration of this request and please do not hesitate to contact me for additional information.

Very truly yours,



Philip J. Wuest

Jim Smith Excavating:

Jim Smith

Wood Waste Management, In.



Rick Franklin

McFarlane’s Bark, Inc.:

Dan McFarlane

PJW:pjw
1144148



Mr. Warren Johnson –Metro’s Solid Waste Code Update
April 27, 2016 – Page 3

Thank you for your consideration of this request and please do not hesitate to contact me for additional information.

Very truly yours,



Philip J. Wuest

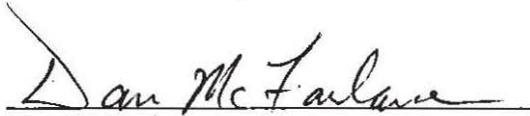
Jim Smith Excavating:

Jim Smith

Wood Waste Management, In.

Rick Franklin

McFarlane’s Bark, Inc.:



Dan McFarlane

PJW:pjw
1144148





April 28, 2016

Mr. Warren Johnson
Metro
600 NE Grand Avenue
Portland, OR 97201

SUBJECT: Metro Solid Waste Code Updates

Dear Mr. Johnson,

Metro is currently seeking public comments on proposed changes to its solid waste code (Title V of the Metro Code). Schnitzer Steel Industries, Inc. ("Schnitzer Steel") appreciates the opportunity to submit these comments regarding the proposed changes.

As an initial matter, Schnitzer Steel is concerned that Metro may not recognize the full effect of its proposed changes. Metro describes the proposed changes as "proposed improvements and housekeeping changes."¹ Metro also suggests that it is simply "[c]leaning up the code."² These statements suggest the proposed changes are non-substantive, non-controversial, or both. Schnitzer Steel does not agree. As explained in this letter, Schnitzer Steel believes many of the proposed changes are substantive and could be controversial. Some of these changes will increase burdens on regulated entities, while others will expand the types of materials regulated under the solid waste code, without sufficient justification to support the changes. Schnitzer Steel is also concerned that stakeholder feedback regarding the proposed changes could be muted because of the way Metro has characterized the changes. The consequence could be a process that lacks sufficient transparency and fails to engage stakeholders who will be impacted.

Metro's proposed changes to the solid waste code would amend the following chapters of the Metro Code: Chapter 5.00 (Solid Waste Definitions), Chapter 5.01 (Solid Waste Facility Regulation), Chapter 5.02 (Disposal Charges and User Fees), and Chapter 5.05 (Solid Waste Flow Control). The comments below are organized by code chapter and focus on specific changes proposed by Metro. This comment letter proposes additional changes to the solid waste code that would further Metro's stated goal of "provid[ing]

¹ Metro, Public Notice: Solid Waste Code Updates (Feb. 29, 2016), <http://www.oregonmetro.gov/news/public-notice-solid-waste-code-updates> (last visited April 5, 2016).

² *Id.*

greater predictability, consistency and clarity for businesses while meeting Metro's public obligations of ensuring accountability and transparency for the public in regulating the region's garbage and recycling system."³ All citations to the solid waste code refer to the *proposed* section numbers, unless otherwise noted.

I. CHAPTER 5.00 (SOLID WASTE DEFINITIONS)

A. Clean Fill

Metro proposes adding "clean fill" as a new defined term. Metro's rationale for adding this new definition is unclear, particularly given that Metro's proposed changes to Chapter 5.00 are intended to "[d]elete . . . unnecessary or unused terms."⁴ The only place Metro proposes to use the new term is in the revised definition of "cleanup material." Metro could achieve the same result without adding "clean fill" as a new defined term.

The issue with adding "clean fill" as a defined term is that it is unclear how clean fill would be regulated under the solid waste code. For example, it is unclear whether clean fill falls within the definition of "solid waste." Relatedly, the definition of "non-putrescible waste" explicitly includes "construction and demolition waste" but explicitly excludes "cleanup material, source separated recyclable materials, special waste, land clearing debris or yard waste." This definition leaves unclear whether clean fill is non-putrescible waste. Whether clean fill falls within the definition of "solid waste" and/or "non-putrescible waste" will affect how clean fill is treated under various provisions of the solid waste code.

Schnitzer Steel encourages Metro to reconsider its decision to add "clean fill" as a new defined term. If Metro decides to retain the proposed definition, Schnitzer Steel encourages Metro to better explain how clean fill will be regulated under the solid waste code.

B. "Designated Facility" and "Metro Designated Facility"

Metro proposes changes to the definitions of "designated facility" and "Metro designated facility." The proposed definitions are:

- "'Designated facility' means a facility that Metro designates as part of the system designated pursuant to Chapter 5.05."

³ *Id.*

⁴ Metro, Summary of Proposed Improvements and Housekeeping Changes to Metro Code Title V (Solid Waste) for 2016, at 2 (Feb. 29, 2016).

- “‘Metro designated facility’ means a facility in the system of solid waste facilities and disposal sites that Metro authorizes under Chapter 5.05 to accept waste generated within the jurisdiction of Metro.”

It is unclear whether Metro intends for these terms to have different meanings. If Metro intends for both terms to have the same meaning, Metro should consistently use one of the terms throughout the solid waste code and remove the other term. If Metro intends for the terms to have different meanings, Schnitzer Steel encourages Metro to better explain the difference between the two terms.

C. Electronic Waste

In its proposed revisions to Chapter 5.01 of the Metro Code, Metro proposes to require facilities to obtain a solid waste license if they shred, mill, pulverize, or store outdoors any electronic waste. Chapter 5.00 does not define the term “electronic waste.” Schnitzer Steel urges Metro to replace references to “electronic waste” with “covered electronic device waste,” based on a term that is used in ORS chapters 459 and 459A. This would better align the solid waste code with ORS chapters 459 and 459A.

Consistent with ORS 459A.305(4), Schnitzer Steel recommends that Metro define “covered electronic device” as follows:

“Covered electronic device” means (1) a computer monitor of any type having a viewable area greater than four inches measured diagonally; (2) a desktop computer or portable computer; (3) a television of any type having a viewable area greater than four inches measured diagonally; (4) a computer peripheral; or (5) a printer. This term does not include (a) any part of a motor vehicle; (b) any part of a larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, such as diagnostic, monitoring or control equipment; (c) telephones or personal digital assistants of any type unless the telephone or personal digital assistant contains a viewable area greater than four inches measured diagonally; or (d) any part of a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier.

Because the term “waste” is separately defined in Chapter 5.00, a separate definition of “covered electronic device waste” is unnecessary.

If Metro is unwilling to replace “electronic waste” with “covered electronic device waste,” Schnitzer Steel urges Metro to define “electronic waste” in Chapter 5.00. The

definition should exclude at least those categories of material described in (a) through (d) of the definition of “covered electronic device waste” proposed above. These exclusions would limit the definition of “electronic waste” to include only those materials commonly understood to constitute electronic waste. This will provide certainty to regulated entities and avoid unintended consequences.

D. “Metro Disposal System” and “Metro Waste Management System”

Metro proposes to delete the definitions of the terms “Metro disposal system” and “Metro waste management system.” However, these terms still appear in other portions of the solid waste code. Further, as currently defined, these two terms do not have the same meaning, nor are they synonymous with the proposed definition of “system.”

As one example, the proposed definition of the term “regional transfer charge” is “a fee that pays the direct unit operating costs of the Metro transfer stations. This fee is imposed upon all solid waste deliveries to *Metro disposal system* facilities.” (Emphasis added.) Without a definition for “Metro disposal system” or “disposal system,” it is unclear on which solid waste deliveries Metro would impose the regional transfer charge.

As another example, the proposed definition of the term “regional system fee” is “a fee that pays Metro *waste management system* costs.” (Emphasis added.) The term “waste management system” also appears in Section 5.02.120(a), which provides: “The regional system fee is the dollar amount per ton of solid waste adopted by Council ordinance for the purpose of paying for *Metro waste management system* costs.” (Emphasis added.) Without a definition for “Metro waste management system” or “waste management system,” it is unclear which costs would be paid by the regional system fee.

E. Standard Recyclable Materials

Metro proposes to delete the definition of the term “standard recyclable materials.” This definition is used elsewhere in the solid waste code (e.g., Secs. 5.10.080(a); 5.10.230(a)(2), (b), and (c); and 5.10.240(b)(1)) and should not be deleted.

II. CHAPTER 5.01 (SOLID WASTE FACILITY REGULATION)

A. Section 5.01.010

Metro proposes to revise and expand the purposes of Chapter 5.01. Metro suggests that the changes are meant to incorporate the “six public benefits” from Metro’s Solid Waste

Roadmap. Metro also proposes to revise and expand the purposes of Chapter 5.05 to incorporate the six public benefits (see Paragraph IV.A below). Metro frequently refers to the six public benefits during meetings related to the proposed changes to the solid waste code. Metro does not, however, consistently define or describe the six public benefits. As one example, the proposed description of the six public benefits in Section 5.01.010 is different than the proposed description of the six public benefits in Section 5.05.010. As another example, in a PowerPoint created by Metro for a September 2015 workshop, Metro explained that one of the six public benefits is to “[p]rovide good value.”⁵ However, “good value” does not appear in the Section 5.01.010 or Section 5.05.010.

If Metro is going to rely on a particular set of public benefits to guide solid waste regulation and interpretation of the solid waste code, Metro should clearly and consistently articulate those benefits. Schnitzer Steel understands Metro entertained significant stakeholder input to develop and define the six public benefits articulated in the Solid Waste Roadmap, and they should not be modified to support varying goals.

B. Subsection 5.01.040(a)

1. Single-Stream Recyclers

Schnitzer Steel believes strongly that scrap metal and similarly situated recyclable materials with intrinsic value, well-established markets, incoming material quality guidelines, and outgoing material specifications should be managed as *commodities* rather than subjected to regulation as “solid waste.” The Oregon Legislature defined “solid waste” to mean:

[A]ll *useless* or *discarded* putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.⁶

ORS 459.005(24) (emphasis added). That means a material must be either *useless* or *discarded* before it is considered a solid waste under state law.

⁵ Metro, 2015 Metro Solid Waste Code Improvements (Title V) (Sept. 3, 2015), http://www.oregonmetro.gov/sites/default/files/Code_workshop_presentation_20150903.pdf.

⁶ The definition excludes certain categories of material that are not relevant to the argument here. ORS 459.005(24).

Schnitzer Steel receives recyclable materials—scrap metal in various forms—that are neither useless nor discarded by the end user. Rather, scrap metal items are typically kept out of the solid waste stream and *sold* to Schnitzer Steel or an intermediate scrap dealer. Schnitzer Steel, in turn, treats that material as a valuable commodity—collecting, sorting, and processing the scrap to meet specific, internationally-recognized specifications, and generally managing the material to maximize its value in the market.

Two of the specific types of solid waste listed in the state definition above are “discarded or abandoned vehicles or parts thereof” and “discarded home and industrial appliances.” ORS 459.005(24). Metro’s definition of “solid waste” includes identical categories. Because Metro’s solid waste definition uses the same language found in ORS 459.005(24), it is logical to interpret these categories in the Metro definition consistent with ORS 459.005(24).

Vehicles, vehicle parts, and appliances are primary types of materials received by Schnitzer Steel. These materials are not useless, discarded, or abandoned; rather, they are valuable materials that have been intentionally segregated from other materials that enter the solid waste stream. The legislature has specifically recognized that certain types of scrap metal, including end-of-life vehicles, vehicle parts, and appliances, *do not routinely enter the solid waste stream*. ORS 459A.010(3).

As a result of these and other considerations, Metro has long recognized single-stream recycling facilities, such as Schnitzer Steel, as a unique category of commercial recycling facility, and has considered them exempt from solid waste facility licensing requirements. Unfortunately, however, the unique character of single-stream recycling facilities is not recognized with a unique exemption that applies only to this type of recycling facility—that is, Subsection 5.01.040(a) does not include a specific exemption for single-stream recycling facilities. Instead, these facilities are subsumed within other, broader exemptions. Single-stream recycling facilities often fall within the exemption applicable to facilities that receive non-putrescible source-separated recyclable materials (Section 5.01.040(a)(3)) or various other exemptions contained in Section 5.01.040(a), but the materials sent to these facilities typically are not “separated” from the waste stream because they never enter the waste stream in the first place.

Schnitzer Steel encourages Metro to take this opportunity to clarify the exemption applicable to single-stream recycling facilities by adopting a single, narrowly tailored exemption that covers all such facilities. This is important because the rationale for exempting these single-stream recycling facilities is specific to these types of facilities. Single-stream recycling facilities like Schnitzer Steel receive a single type of recyclable material (for Schnitzer Steel, scrap metal in various forms). Single-stream recyclable

materials generally have intrinsic value, well-established markets, incoming material quality guidelines, and outgoing material specifications. As such, these types of recyclable materials are managed by both the recycling facility and end user as a commodity, not a solid waste.

Schnitzer Steel suggests the following description for the new exemption: “Facilities that (A) exclusively receive single-stream recyclable materials, and (B) reuse or recycle those materials, or transfer, transport or deliver those materials to a person or facility that will reuse or recycle them.”

Metro would also need to add a new definition for “single-stream recyclable material” to Section 5.00.010. Schnitzer Steel suggests the following definition:

“Single-stream recyclable material” means recyclable material that (i) has been isolated as a single material type (e.g., a specific type of standard recyclable material) for the purpose of recycling, or (ii) is predominantly made up of a single material type for which mechanical processing is necessary to further separate component types of recyclable materials.

2. Incidental Quantity Exemption for Electronic Waste

Metro proposes to require a solid waste license for all facilities that shred, mill, pulverize, or store outdoors any electronic waste (see Section 5.01.050(a)(6)). Schnitzer Steel urges Metro to replace the term “electronic waste” with “covered electronic device waste” (see Paragraph I.C above).

As proposed, the licensing requirement would apply quite broadly to facilities that shred, mill, pulverize, or store outdoors *any* electronic waste, which could arguably include small circuit boards or other electronic components contained inside any appliance with digital controls or a potentially unidentified printer inside a large load of scrap, as examples. This could have the unintended consequence of requiring licenses for facilities that incidentally shred, mill, pulverize, or store outdoors small quantities of electronic waste (or covered electronic device waste). To avoid this unintended consequence, Schnitzer Steel encourages Metro to add the following exemption to Section 5.01.040(a): “Facilities that incidentally shred, mill, pulverize, or store outdoors small quantities of electronic waste [or covered electronic device waste].”

C. Subsection 5.01.080(e)

Under the current solid waste code, if Metro’s Chief Operating Officer (“COO”) fails to grant or deny a license application within 120 days, the license is deemed

granted. Metro proposes to eliminate this requirement and replace it with a process under which the applicant may request the Metro Council to direct the COO to act on the license if the COO fails to act within 120 days.

Metro does not provide adequate justification for this change. The change would reduce the incentive for the COO to expeditiously review and act on license applications. Metro has not identified any instance in which the 120-day deadline has caused the COO to grant or deny a license application that otherwise would have been processed differently. Therefore, Schnitzer Steel opposes this proposed change.

D. Section 5.01.110

The proposed revision to Subsection (a) is confusing when read together with Subsection (d). Proposed Subsection (a) reads: "The [COO] may approve or deny a license renewal of a solid waste facility." As written, this provision suggests that the COO has complete discretion to approve or deny a license. However, proposed Subsection (d) reads: "The [COO] must approve a solid waste facility license renewal unless" Subsection (a) would be more clear if it read: "The [COO] will review a license renewal and approve or deny it consistent with this section."

E. Subsection 5.01.180(g)

Similar to the proposed changes to Subsection 5.01.080(e) (discussed above), under the current solid waste code, if the Metro Council fails to grant or deny a franchise application within 120 days, the franchise is deemed granted. Metro proposes to eliminate the automatic grant of a franchise.

Metro does not provide adequate justification for this change. The change would reduce the incentive for the Metro Council to expeditiously review and act on franchise applications. Subsection (h)(3) already allows for an extension of the 120-day deadline by mutual agreement of the applicant and the COO. This extension process is adequate to address situations in which the Metro Council is unable to act on a franchise application within 120 days. Metro has not identified any instance in which the 120-day deadline has caused the Metro Council to grant or deny a franchise application that otherwise would have been processed differently. Therefore, Schnitzer Steel opposes this proposed change.

F. Section 5.01.280

Metro proposes to modify the COO's authority to adopt and amend rules, performance standards, procedures, and forms. The proposed title of Section 5.01.280 is: "Adoption

and Amendment of Administrative Rules and Performance Standards.” The title would more closely align with the substantive provisions of the section if it read: “Adoption and Amendment of Rules, Performance Standards, Procedures and Forms.” Although the title of Section 5.01.280 makes clear that Metro intends the substantive provisions of the section to apply to both *adoption* and *amendment* of rules, performance standards, procedures, and forms, the section’s substantive provisions refer to *adoption* but not *amendment*. To clarify the scope of Section 5.01.280, Metro should revise the section’s substantive provisions to refer to both adoption and amendment.

The proposed changes to the substantive provisions of Section 5.01.280 include new procedural protections. These proposed changes provide greater protection to licensees and franchisees, but some of the other proposed changes to the section would arguably expand Metro’s rulemaking authority. The proposed changes are discussed in more detail below.

1. Applicability of Rules to Exempt Facilities

Under *current* Section 5.01.132, the COO’s rulemaking authority is limited to issuing “administrative procedures and performance standards governing the *obligations of licensees and franchisees*.” (Emphasis added.) In contrast, *proposed* Section 5.01.280 is ambiguous about whether the COO’s rulemaking authority extends to operators of exempt facilities. Subsection 5.01.280(a) provides: “The [COO] may adopt rules, performance standards, procedures and forms to implement any provision of this chapter. Any rule, performance standard, procedure and form adopted under this section has the same force and effect as any other chapter provision.”

Schnitzer Steel encourages Metro to clarify that the rules, performance standards, procedures, and forms adopted by the COO apply only to licensees and franchisees.

2. Public Notice and Comment

Subsection 5.01.280(b) would require the COO to provide a 30-day public comment period before adopting any rules or performance standards. However, as proposed, this requirement does not explicitly extend to procedures and forms adopted under Section 5.01.280. Because these procedures and forms will have “the same force and effect as any other chapter provision,” the procedures and forms should also be subject to a 30-day public comment period.

Subsection 5.01.280(b) is silent regarding the type of notice Metro must provide regarding the public comment period. Metro should revise the subsection to require notice in a manner reasonably calculated to reach interested parties.

Metro could address these suggestions by replacing the first sentence of Subsection 5.01.280(b) with the following:

Before the Chief Operating Officer adopts or amends a rule, performance standard, procedure or form under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. Metro will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description of the proposed rule, performance standard, procedure or form; the location at which a person may obtain copies of the full text of the proposed rule, performance standard, procedure or form; the method for submitting comments; and the deadline for submitting public comments.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(b) and 5.05.260(b).

3. Public Hearings

Subsections 5.01.280(b) and (c) include requirements related to public hearings. As proposed in Subsection 5.01.280(b), the COO “*may . . . hold a public hearing on any proposed rule or performance standard if the [COO] determines that there is sufficient public interest in the proposed rule or performance standard.*” (Emphases added.) This would vest complete discretion in whether to hold a public hearing with the COO and undermines the procedural protection that a public hearing would provide.

Schnitzer Steel encourages Metro to strengthen this procedural protection by *requiring* public hearings under certain circumstances and expanding the scope of the public hearing provision to cover proposed procedures and forms. Schnitzer Steel suggests replacing the last sentence of Subsection 5.01.280(b) with the following:

The Chief Operating Officer may hold a public hearing on any proposed rule, performance standard, procedure or form if the Chief Operating Officer determines that there is sufficient public interest in the proposed rule, performance standard, procedure or form. The Chief Operating Officer will hold a public hearing if the Chief Operating Officer (i) determines or receives evidence showing that the proposed rule, performance standard, procedure or form could have a material economic impact on a licensee or franchisee, or (ii) receives at least five written requests for a public hearing.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(b) and 5.05.260(b).

4. Effective Date

Subsection 5.01.280(d) provides that, unless otherwise stated, all rules and performance standards take effect when the COO adopts them. This does not provide a sufficient opportunity to challenge the rules and performance standards before they become effective. Absent a serious danger to public health or safety, it is unnecessary for any proposed rule, performance standard, procedure or form to take effect sooner than 60 days following adoption.

Schnitzer Steel suggests replacing Subsection 5.01.280(d) with the following:

All rules, performance standards, procedures and forms adopted or amended under this section will take effect 60 days after adoption or amendment by the Chief Operating Officer, unless (i) the Chief Operating Officer specifies an earlier effective date after determining that failure to immediately implement the rule, performance standard, procedure or form would create a serious danger to the public health or safety, or (ii) the Chief Operating Officer specifies a later effective date.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(d) and 5.05.260(d).

5. Interim Rules and Performance Standards

Subsection 5.01.280(e) would allow the COO to circumvent the public notice and comment process when adopting interim rules and performance standards. To adopt an interim rule or performance standard, the COO must find that “failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party.” This is a vague standard and arguably creates a lower threshold than the “serious danger” standard contained in other sections of Chapter 5.01.

Schnitzer Steel suggests replacing Subsection 5.01.280(e) with the following:

Notwithstanding subsections (b) and (d) of this section, the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice or comment or opportunity for a public hearing only if the Chief Operating Officer finds that failure to act immediately will result in serious danger to the public health or safety.

The Chief Operating Officer must explain, in writing, the basis for adopting the interim rule or performance standard. Any rule or performance standard adopted pursuant to this subsection takes effect upon adoption and expires no later than 180 days from its effective date.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(e) and 5.05.260(e).

G. Subsection 5.01.290(a)

Subsection 5.01.040(c) provides that certain exempt activities and facilities are subject to Section 5.01.290, which relates to inspections and audits. This authority is intended to allow Metro to inspect and audit certain exempt activities and facilities for the limited purpose of confirming that those activities and facilities qualify for the claimed exemption. Schnitzer Steel recommends that Metro add the following sentence at the end of Subsection 5.01.290(a) to clarify the relationship between Subsection 5.01.040(c) and Subsection 5.01.290(a): “The Chief Operating Officer is authorized to inspect, audit, or otherwise investigate activities and facilities described in Subsections 5.01.040(a)(3) through (a)(9) only to confirm that such activity or facility is exempt under Section 5.01.040.”

H. Subsection 5.01.320(f)

This subsection relates to the effect of Metro’s revocation of, or refusal to renew, a franchise or license. As proposed by Metro, this subsection would read: “If Metro revokes or refuses to renew a franchise or license, all franchisee or licensee rights in the franchise or license become void.” The phrase “or refuses to renew” should be deleted from this subsection for at least two reasons. *First*, Section 5.01.320 relates to the suspension, modification, and revocation of licenses and franchises, not the refusal to renew a license or franchise. *Second*, as written, subsection (f) is inconsistent with subsection 5.01.340(b), which provides that the COO’s refusal to renew a license does not become effective until Metro affords the franchisee or licensee an opportunity for a contested case hearing (unless necessary to avoid serious danger to the public health or safety).

III. CHAPTER 5.02 (DISPOSAL CHARGES AND USER FEES)

A. Subsection 5.02.050(a)

Metro proposes adding the following sentence to Subsection 5.02.050(a): “‘Source separated recyclable material’ has the same meaning as defined in ORS 459.005.” This

statement is not correct because ORS 459.005 does not define “source separated recyclable material.” The term is, however, defined in Section 5.00.010.

B. Subsections 5.02.060(a) and 5.02.080(f)(4)

References in these subsections to “enhancement fee” should be replaced with “community enhancement fee” to align these subsections with Metro’s proposed changes to definitions in Section 5.00.010.

C. Section 5.02.170

See proposed changes to this section in Paragraphs II.F.2 through II.F.5 above.

IV. CHAPTER 5.05 (SOLID WASTE FLOW CONTROL)

A. Section 5.05.010

Metro proposes to revise and expand the purposes of Chapter 5.05. Metro suggests that the changes merely incorporate the “six public benefits” from Metro’s Solid Waste Roadmap (similar to the proposed changes to Chapter 5.01). However, the six public benefits listed in Chapter 5.05 are not identical to the six public benefits listed in Chapter 5.01. (See Paragraph II.A above for further discussion regarding this issue.)

B. Subsection 5.05.020(c)

Metro proposes to revise the description of the authority under which it regulates under Chapter 5.05. The current solid waste code states that Metro is exercising its authority under ORS 268.317 and ORS 268.360. Metro proposes to replace the references to those specific statutory sections with a generic reference to ORS chapter 268. This is arguably a substantive change because ORS 268.317 is limited to solid and liquid waste *disposal* powers and ORS 268.360 relates to Metro’s authority to enact and enforce ordinances. In contrast, other sections of ORS chapter 268 would grant broader powers to Metro (e.g., ORS 268.310(6) authorizes Metro to “[e]xercise jurisdiction over other matters of metropolitan concern as authorized by [the Metro] charter”). If Metro intends to rely on statutory grants of authority beyond ORS 268.317 and ORS 268.360, Metro should do so explicitly and provide an adequate justification for the exercise of broader statutory authority.

C. Subsection 5.05.050(a)

This subsection provides an exemption from the general requirement to obtain a non-system license in order to transport, or cause to be transported, solid waste generated

within Metro to any solid waste facility or disposal site. The exemption applies to “non-putrescible source separated recyclable materials that are either: (i) reused or recycled, or (ii) transferred, transported or delivered to a person or facility that will reuse or recycle them.” As currently drafted, it is somewhat unclear at what point the exemption begins to apply. However, the clear intent of the exemption is that it applies to source separated recyclable materials from the point of source separation, provided the materials *will be* reused or recycled or transferred, transported, or delivered to a person or facility that will reuse or recycle them. Metro should revise this subsection to ensure it is implemented as intended.

Metro could clarify the intent of the exemption by adding a sentence to the end of Subsection 5.05.050(a) that states: “This exemption applies from the point of source separation, provided the materials are ultimately: (i) reused or recycled, or (ii) transferred, transported or delivered to a person or facility that will reuse or recycle them.”

D. Subsection 5.05.080(b)(6)

This subsection lists the factors the Metro Council may consider in deciding whether to remove a facility from Metro’s designated facilities list. Metro proposes to add a catchall factor: “Any other factor the Council considers appropriate.” This factor is broader than necessary to accomplish the purposes of Chapter 5.05. At a minimum, the catchall factor should be limited to “Any other factor *necessary to accomplish the purposes of this chapter.*” (Emphasis added.)

E. Subsection 5.05.150(b)

This subsection relates to the conditions the COO may impose on a new or renewed non-system license. Metro proposes to add language that would allow the COO to “impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as the [COO] considers necessary under the circumstances.” This grant of authority is more broad than necessary to accomplish the purposes of Chapter 5.05, and Metro has not provided sufficient justification for such a broad grant of authority. A more limited grant of authority would allow the COO to “impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as *necessary to accomplish the purposes of this chapter.*” (Emphasis added.)

F. Section 5.05.260

See proposed changes to this section in Paragraphs II.F.2 through II.F.5 above.

Mr. Warren Johnson

April 28, 2016

Page 15

V. CONCLUSION

We appreciate the opportunity to provide these comments to Metro and appreciate the role Metro plays in regulating the solid waste management and disposal system for the region. We look forward to continued discussions regarding how to ensure Metro can achieve its regulatory objectives without placing unnecessary burdens on the recycling industry.

Please contact me at 503.265.6339 to discuss any of the comments provided in this letter.

Respectfully,

SCHNITZER STEEL INDUSTRIES, INC.

A handwritten signature in blue ink, appearing to read 'Mathew J. Cusma', with a stylized flourish at the end.

MATHEW J. CUSMA

Senior Environmental Manager

cc: Mr. Tom Hughes, Metro Council President

Oregon Refuse and Recycling Association

David White, Regional Representative

1739 NW 156th Avenue Beaverton, Oregon 97006

(503) 690-3143 (Tel)

(503) 536-6708 (Fax)

davidw@orra.net

April 29, 2016

Mr. Warren Johnson, Solid Waste Compliance Supervisor
Property and Environmental Services
Metro
600 NE Grand Avenue | Portland, OR 97232

Re: Comments on Proposed revisions to Metro Code Chapter 5.00 (Solid Waste Definitions)

Dear Mr. Johnson:

I am Regional Representative for the Oregon Refuse and Recycling Association (ORRA). ORRA is the statewide trade association representing solid waste management companies in Oregon. ORRA members collect and process most of Oregon's residential and commercial refuse and recyclables, as well as operate source-separated recyclable material processing facilities and many of Oregon's municipal solid waste transfer stations and landfills.

Please consider the following comments regarding Metro's definition of Solid Waste:

The state of Oregon, in ORS 459.005 (24), defines Solid Waste as follows:

Solid waste means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386 (Definitions for ORS 459.386 to 459.405). Solid waste does not include:

(a) Hazardous waste as defined in ORS 466.005 (Definitions for ORS 453.635 and 466.005 to 466.385).

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

(c) Woody biomass that is combusted as a fuel by a facility that has obtained a permit described in ORS 468A.040 (Permits).

Metro, in Code 5.01.010 (Definitions), defines Solid Waste as follows:

“Solid waste” means all putrescible and non-putrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings

or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals; infectious waste as defined in ORS 459.386; and other such wastes, including without limitation cleanup materials contaminated with hazardous substances, commingled recyclable material, petroleum contaminated soil, special waste, source-separated recyclable material, land clearing debris and yard debris; but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005;
- (2) Radioactive wastes as defined in ORS 469.300;
- (3) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates; or
- (4) Explosives.

Metro's definition of Solid Waste varies significantly from the state's definition. Specifically Metro's definition deletes the words "useless and discarded" and adds the words "commingled recyclable material" and "source-separated recyclable material".

In the Summary of Proposed Metro Title V Changes, dated February 29, 2016 in the section on Chapter 5.00, it states that proposed changes specific to Modified Terms or Added Terms were to "Change definitions to match as defined by state or reference Oregon Administrative Rules. In general, the term is defined verbatim to assist the reader. Citation references are only used when the State's definition is too long or not easily transcribed."

It appears from the above, that at least in some instances, Metro acknowledges the importance of adopting definitions that are consistent with the state definition. This provides the solid waste system with reliable, established and generally accepted references. Metro has chosen to deviate from the accepted definition of Solid Waste.

Metro's definition of Solid Waste should follow the state of Oregon's definition by reinserting the words "useless and discarded" to clarify that the material is unwanted by the person last using it and deleting the words "commingled recyclable material" and "source-separated recyclable material" to clarify that the material has not been separated from solid waste for the purpose of recycling by the person last using it.

Sincerely,



David White, ORRA Regional Representative

cc: Kristan Mitchell, Executive Director, Oregon Refuse and Recycling Association



10295 SW Ridder Road, Wilsonville, OR 97070
O: 503.570.0626 F: 503.982.9307 republicservices.com

April 29, 2016

Warren Johnson
Metro
Regulatory Affairs Department
600 N.E. Grand Ave.
Portland, OR 97232

RE: Proposed changes to Metro Code Chapters 5.00, 5.01, 5.02, 5.05 and 7.01

Dear Mr. Johnson:

Republic Services, Inc. is unable at this time to provide constructive commentary regarding the proposed changes to Metro Code Chapters 5.00, 5.01 5.02 5.05 and 7.01. You have informed us that the "proposed changes seek greater consistency in how Metro reviews and authorizes solid waste facilities, greater transparency in how Metro implements its requirements to protect the environment and the public health, and greater adaptability to changing conditions, all while making the (Metro) Code easier to use and understand." Our inability to comment at this time stems from the lack of a context upon which we can evaluate the ramifications resulting from a change in a provision of the Metro Code you are proposing.

David White, our representative with Oregon Refuse and Recycling Association (ORRA), recommended some time ago that the changes to the Metro Code proposed by you should be considered during the review of the Regional Solid Waste Management Plan. I believe this review will take place in next 12 to 18 months. Republic Services believes a more suitable process would be to adopt the evaluating of your proposed changes to Metro Code 5.00, 5.01 5.02 5.05 and 7.01 during the review of RSWMP which would provide the needed context.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jason Jordan".

Jason Jordan
General Manager

cc: Brian May, Republic Services, Inc.
David White, ORRA